

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIO, JR.  
CLERK

In The  
SUPREME COURT OF THE UNITED STATES  
October Term, 1986

CHARLES LALLAK, etc. et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent.

On Petition for a Writ of Certiorari  
to the United States Court of  
Appeals for the Eighth Circuit

PETITION FOR CERTIORARI

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## **A. QUESTIONS PRESENTED FOR REVIEW**

I-VII. Petitioners Lallak hereby restate and incorporate by reference questions I through VI prescribed for review in the Petition for Certiorari by Petitioners Myers and Buchan.

VII. Are Deputy Sheriffs immune from suit under 42 U.S.C. §1983 when the criminal complaint regarding the Lallaks attested to by the arresting officer was facially invalid and when the officers either knew the allegations to be untrue or could not maintain a reasonably objective belief as to the truthfulness of the allegations.

## **B. LIST OF PARTIES**

The complete list of parties for the cases on appeal (hereinafter Lallak) appear in the Appendix to the Myers and Buchan petition.

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### D. TABLE OF AUTHORITIES

Petitioners restate and incorporate by reference the Table of Authorities in the Petition for Writ of Certiorari of Myers and Buchan.



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PETITION FOR CERTIORARI

Petitioners Lallak pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit in his proceeding.

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**E. OPINIONS IN THE COURTS BELOW**

In re Scott County Master Docket, 618 F. Supp. 1534 (D. Minn. 1985); Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987).

**F. JURISDICTIONAL GROUNDS**

Petitioners seek review of a decree filed by the Court of Appeals for the Eighth Circuit on February 3, 1987, and the denial was entered by the Court of Appeals for the Eighth Circuit on April 9, 1987. The statutory provision believed to confer on this Court jurisdiction to review the decrees in questions by writ of certiorari is 28 U.S.C. § 1254 (1).

**G. CONSTITUTIONAL PROVISIONS, ORDINANCES, AND REGULATIONS WHICH THE CASE INVOLVES**

CONST. amendment I provides:

"Congress shall make no law...abridging the freedom of speech..or the right of the people peaceably to assemble..."

CONST. amendment IV provides:

"The right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

CONST. amendment V provides:

"No persons shall be...deprived of life, liberty, or property, without due process of law.."

CONST. amendment XIV provides:

"...nor shall any state deprive any person of life, liberty or property without due process of law..."

CONST. amendment VIII provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

42 U.S.C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of

Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Minn. Code Admin. Regs. 9560 et seq requires preservation of the family unit in alleged neglect situations.

#### STATEMENT OF THE CASE

A complete recitation of the facts cannot be presented because the district court order appealed from was based upon a prediscovery motion for dismissal on the grounds of absolute and/or qualified immunity. As such, the record is incomplete and does not include most of the evidence

developed through discovery, including a tape recording of defendant Morris containing numerous admissions, the expert opinion testimony petitioners intended to introduce regarding the lack of objectivity of defendant officers, failure on the part of defendant sheriff to properly supervise the officers assigned to the investigation and evidence establishing that the prosecutor's conduct in taking over the investigation of the case was not within the scope of her duties as a prosecutor. However, the petition for certiorari submitted by Appellants Myers and Buchan recites facts germane to those cases. Accordingly, Appellant Lallaks specifically incorporates by reference the Statement of Facts and Argument in Appellants Myers and Buchan Petitions.

In 1983, Jordan, Minnesota was a small, quiet Minnesota River Valley town, when it was rocked by allegations of child sex abuse, the investigation of which eventually resulted in the arrest of 24 adults from the Jordan area.

The arrests began on September 26, 1983 when a woman, later arrested herself, contacted Jordan police to report that she feared that James Rud had sexually abused her ten-year-old daughter and eight-year-old son. Rud was arrested immediately. He later admitted to having had sexual relations with 16 male and female children, ranging in age from five to twelve. During the course of the investigation of Rud, the police learned the names of other children purported to be victims of abuse.

Memorandum and Order\*; Humphrey Report, Add. 1-19, App. Vol. 5, pp. 1602- 1643.

Rud, who had four previous sex-related convictions, pleaded guilty in August, 1984 in exchange for a six-year prison sentence. He then implicated 18 of the 24 defendants in a statement. The case then quickly unraveled.

At the first trial, of Robert and Lois Bentz, Rud was unable to identify Bentz, one of those he had implicated. A boy admitted on cross-examination that he lied three

\* The Memorandum and Order is contained in the separately bound "Trial Court Orders Appealed from and Memorandum Opinion" submitted by petitioners Myers and Buchan in conjunction with their Petition.

times on direct examination. One girl said during cross-examination that the Bentz case had been discussed at a pool party given by the prosecution. Rud also withdrew his statements after learning that he had failed a lie detector test, and his plea agreement was revoked.

Of all the criminal cases involving the so-called Jordan sex ring, only the Bentz case went to trial. In September of 1984, the jury acquitted the Bentzes of all counts. On October 15, 1984, following the jury selection in the trial of Donald and Cindy Buchan, Scott County Attorney R. Kathleen Morris dismissed the charges against the remaining criminal defendants. Shortly after she was ordered to turn over certain police notes to defense counsel.



Subsequently, the Minnesota Attorney General, Hubert H. Humphrey, the Minnesota Bureau of Criminal Apprehension and the Federal Bureau of Investigation assumed control over further investigations and legal proceedings involving alleged Scott County child abusers. (Id.) These authorities did not reinstate criminal actions against any of the 21 individuals who had their charges dismissed. Without exception, the children of each of these adult appellees has been returned to their custody following family court proceedings, or, in the case of the Lallaks, immediately after the criminal charges were dismissed.

The "investigation" of these cases by Scott County was coordinated by the County Attorney and involved members of both the

Human Services Department and the Sheriff's Department. Ms. Morris completely usurped the role of Sheriff Tietz in running the investigation of these cases. Weekly meetings were held in Ms. Morris' office with members of the Department of Human Services and the Sheriff's Department throughout late 1983 and early 1984. In these meetings, information was shared and assignments as to child interviews were given. Ms. Morris directed social workers to interview children for the purposes of eliciting information to be used against those children's parents and other adults. Ms. Morris directed those social workers not to undertake their normal role of providing social services to the children and their parents but, rather, to undertake

a vigorous course of investigation. Additionally, Ms. Morris regularly scheduled interviews of children for the purposes of soliciting and directing those children to fabricate stories of child abuse against their parents and other adults.

A complete review of the existing record makes it clear that allegations of sexual abuse were fabricated in reckless disregard of the truth, with the knowledge and at the direction of Ms. Morris. It is equally clear that Sheriff Tietz failed to intervene in this violation of plaintiffs' rights.

Perhaps the most egregious violation of constitutional rights occurred in the Lallaks' case. Charles and Carol Lallak were arrested on May 23, 1984. They were

the second to last persons charged. The criminal complaints are identical, and name three children as accusers, Andrew and Amy Myers and Jeff Brown. The principal accuser against the Lallaks was eleven-year-old Andrew Myers.

Andrew and Amy Myers were taken from their parents on February 6, 1984 when their father was arrested. That evening, four-year-old Amy was taken for a physical examination which disclosed no abuse. Andrew first suggested that he was sexually abused, almost three full months and 25 interviews after he was taken from his parents. Furthermore, the County had been previously advised by Psychologist Bevans in the clearest, most extreme terms that Andy Myers was about to break psychologically

because of his separation from his family. Amy Myers, then only four years old, acquiesced to the police investigator's questions on May 5, 1984 and agreed with them that she had been "hurt" and "spanked" with the "finger in the butt." Amy's statements in that interview were consistent with Andy's previous statements because, as is clear from the police report, the investigators asked leading and suggestive questions, and Amy responded with one word or short answers. As attested to by numerous deponents, including assistant county attorneys, deputies, and children, the children interrogated about sexual abuse were repeatedly asked leading and suggestive questions.

After a three-month separation from their family, 25 interviews and repeated leading and suggestive questions, the Myers children broke (as warned by Psychologist Bevans) and allegedly incriminated the Lallaks. Both children have recanted this testimony. When Andy Myers was asked by an FBI agent why he made up these stories, he replied that's what the investigators wanted him to say.

The criminal complaint against the Lallaks also charges them with two felony counts for abusing eleven-year-old Jeff Brown. The specific allegations involving Jeff Brown made by the complainant Deputy Michael Busch were:

Complainant is informed by Scott County Detective Pat Morgan that J.B., male

juvenile, DOB: 04-14-73, told Detective Morgan that during the summer of 1983 he camped at the Quarry Campground with the Myers, Lallaks, Ranks and Brown.

J.B. and female juvenile B.B., DOB: 01-21-75, were shown pictures of the Quarry Campground which they identified as the location where the above-described camping activity took place. J.B. and B.B. stated that they had been sexually abused by various adults and on various occasions at the Quarry Campground during the summer of 1983.

Based upon the above language, the Complaint was facially invalid. It merely recites that Detective Busch was informed by Detective Morgan that Jeff Brown camped at the Quarry Campground with the Myers, Lallaks, Ranks and Browns. No where did the Complaint recite any facts to sustain the allegation that Jeff Brown was abused by the Lallaks. In fact, Jeff Brown recanted all testimony regarding any abuse by adults.

Furthermore, he, too, was interviewed well over 25 times and was subjected to repeated leading and suggestive questions.

One example of the extreme pressure brought to bear upon these children is represented by the interrogation session of Jeff Brown on July 16, 1984. Jeff was interrogated all afternoon and into the evening. The following individuals were initially present during that session: Jeff Brown, Kathleen Morris (County Attorney), Gehl Tucker (Assistant County Attorney), Nancy Platto (Assistant County Attorney), Norm Pint (Deputy Sheriff), Tom Price ("Psychotherapist"), and Diane Johnson (Guardian). Later in the evening, Robert Van Siclen, Jeff Brown's appointed therapist, was called by Tom Price, a non-



court appointed therapist, and asked to attend the sessions because "Jeff was talking about some things that had him rather scared." Van Siclen testified that Pint, Price and Tucker were all asking questions. Van Siclen further testified that he thought the questioners were letting Jeff Brown "be too glib about his answers" and asked leading and suggestive questions. Specifically, Van Siclen noted that the questioners "seemed to focus on certain individuals who I don't know, but that they seemed to focus on certain individuals rather than allowing more open-ended responses.

Ultimately, Jeff Brown began to agree with his questioners about certain allegations involving the murder of several

children. The deputy sheriff laid out a series of pictures and asked which people were involved in the murders. As related by Van Siclen, "Jeff sat drinking a Coke and pointing at them with his feet, and I don't think I would have let him be that informal." Finally, Jeff asked to talk to Diane Johnson. They left and went into another office. They came back and Jeff then told all assembled that "he made all of the stories about the murders up, that he had made those up, that they weren't true."

Then, Jeff demanded to speak with Van Siclen alone. Jeff told Van Siclen "that in fact everything else had been made up and that all of the sex stuff, quote, unquote, 'all of the sex stuff' was made up and that none of it ever happened . . ." Jeff later

made these statements to everyone at the July 16 meeting. Notwithstanding these repeated recantations, the only written reports prepared regarding this interview were those of Norm Pint wherein he reported the allegations of murder and mutilation of four young children but failed to note the recantations or make any mention of the varied exculpatory evidence presented by Jeff Brown on July 16, 1984. Further, all that was reflected in the notes prepared by Mr. Pint was the allegations of murder and sex abuse.

The criminal complaint against the Lallaks also recited that James Rud was charged with criminal sexual conduct, even though by defendant's own admission there is or was no connection between Rud and the

Lallaks, nor had they ever met. The Complaint further alleges that Detective Pint informed Detective Busch that John Krah1 was abused by the Lallaks. John Krah1, however, never met the Lallaks nor does any note or police report exist evidencing any such involvement by Krah1. Apparently, defendants recognized this because neither of the Lallaks were ever charged with abusing Krah1.

Additional testimony developed after the initial summary judgment motion, and not a part of the record before this Court, bears directly upon the liability of Ms. Morris and the deputies. As attested to by assistant county attorneys, deputies, and children, defendants engaged in conduct which is fundamentally offensive to a sense

of justice and which shocks the conscience: separated children from their parents, and thereafter arrested parents on the basis of allegations not even approaching probable cause; subjected young children to repeated interrogations by multiple interrogators and asked leading and suggestive questions; rewarded allegations of abuse and disapproved of allegations exculpating the accused; used the arrest of parents to create an exigency for the need to remove children from the home; transformed the role of social workers from the providers of services to investigators and interrogators; transferred and effectively eliminated the role of the Scott County Sheriff with regard to supervision of the investigators, and suppressed and destroyed exculpatory

evidence. All of these activities, separately and collectively constitute a violation of the constitution.

**I. BASIS FOR FEDERAL JURISDICTION  
IN THE COURT OF FIRST INSTANCE**

Jurisdiction in the Minnesota Federal District Court was conferred by 28 U.S.C. § 1343 (3).

Petitioners Lallak expressly restate and incorporate by reference the argument submitted in the petition for writ of Certiorari of Myers and Buchan.

July 6, 1987

Respectfully submitted,

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No. 86-2016

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*Respondents. -*

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

**Brief of Respondents Morris, Busch, et al  
In Opposition**

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IN THE  
**Supreme Court of the United States**

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**Brief of Respondents Morris, Busch, et al  
In Opposition**

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**STATEMENT OF CASE**

The facts of the case are accurately and comprehensively set forth in the decision of the Court of Appeals (Joint Appendix at F-14 to F-20). In contrast, Petitioners' Statement of the Case is inaccurate, inadequate, and misleading. They first claim that a complete recitation of facts cannot be made because the original motions in the trial court were pre-discovery motions. To the contrary, as the Court of Appeals acknowledged, it had before it a massive, multi-volume, fact filled record including evidence developed during extensive discovery that occurred after the motions were decided in the trial court (Joint Appendix at F-19).

Having complained of the impossibility of reciting the full facts, Petitioners then go on to "incorporate by reference" the misleading and unreliable statement of facts by Petitioners Buchan and Myers in their related cases. While the Rules allow for a joint petition by parties similarly situated (U.S. Sup. Ct. Rule 19.4, 28 U.S.C.A.), the Rules do not go so far as to allow a Petitioner to separately use another petition as his own as Lallaks have attempted in this case.

The remainder of the Lallaks' Petition is a misstatement of the facts, unsupported by any record and as unreliable as the recitation by Petitioners Buchan and Myers.

Lallaks have alleged that there was no probable cause to arrest them because the children on whose statements the police relied lied or the children never made the statements attributed to them and the police officers lied. The very extensive record in this case is devoid of any evidence that the police officers lied or that the children were not credible witnesses. The truth is that Lallaks were arrested based on statements of children whose credibility was proven. A District Court Judge found probable cause based on those statements and signed an arrest warrant on May 23, 1984. (R.A. 8, 20). Lallaks simply did not come up with facts to rebut the evidence presented to the trial court by these Respondents or to show in any way that the police fabricated or misstated evidence to the judge who signed the arrest warrants.

### **SUMMARY OF ARGUMENT**

The Petition does not present this Court with any reasons for granting certiorari. Petitioners have not shown that any conflict exists between the Eighth Circuit Court of Appeals

and any other circuit on the same issues. Nor have they shown that the Court of Appeals usurped the authority of this Court to decide a question of federal law.

### **ARGUMENT**

Petitioners have failed to satisfy the requirements of Rule 17. In fact, Petitioners have not presented any legal argument whatsoever in their own Petition. We do not think that these Respondents are required to respond to arguments "incorporated by reference" in a Petition which seeks a writ of certiorari from the Supreme Court of the United States of America. For the convenience of the Court, however, in the event that Petitioners' novel approach is deemed sufficient, we make the following argument, which we freely admit is a nearly verbatim rendition of the arguments presented in opposition to the Buchan and Myers' Petition.

#### **1.**

##### **Absolute Immunity For County Attorney.**

The Court of Appeals has determined that the challenged conduct of the County Attorney was well within the scope of her duties as an advocate and was part of the prosecutorial function. Petitioners' assertions to the contrary are easily answered by pointing out that the first of the criminal charges against the Jordan adult defendants were brought in late September, 1983 and these were followed by multiple additional charges against additional adults through January, 1984. The police investigation into these cases led to charges against additional adults, including the Lallaks in May, 1984.

The challenged activities of the County Attorney involved her pre-trial contacts with child witnesses who

would be key state's witnesses in the cases charged in late 1983 as well as in the cases charged after January, 1984. A County Attorney has a right and a duty to meet with child witnesses for purposes of evaluating her cases and for trial preparation. When the prosecutor does this, she functions as an advocate and her activities are clearly protected under the shield long recognized at common law and by this Court in *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). The decision of the Eighth Circuit granting absolute immunity to Respondent Morris is well within the parameters established in *Imbler*. Furthermore, the Eighth Circuit carefully listed each of the allegations of prosecutorial misconduct which have been made by Petitioners against Morris. The Court then reviewed each of them and separately cited case law supporting absolute immunity for the alleged activities. There is no conflict between the opinion of the Eighth Circuit and the opinions of other federal circuit courts on the issue of absolute immunity for a prosecutor. Petitioners have failed to show such a distinction.

The Court of Appeals separately considered the allegations that the County Attorney withheld or suppressed "exculpatory evidence" and that absolute immunity is not available in respect to such activity. The Eighth Circuit addresses that issue at length (Joint Appendix F-25-27). Contrary to the assertions by Petitioners Buchan and Myers at page 10 of their Petition, the Eighth Circuit did not hold that absolute immunity would be available in regard to the withholding or destruction of exculpatory evidence. To the contrary, the Court held that even if that occurred in this case, the evidence allegedly destroyed did not result in constitutional injury to the Petitioners. Accordingly, the decision of the Eighth Circuit is *not* at odds with that of the Third Circuit in *Henderson v. Fisher*, 631 F.2d 1115 (3rd Cir. 1980) as wrongly stated by Petitioners.

## 2.

**No Factual Support For Conspiracy Claims.**

The conspiracy claims asserted by Petitioners fall, of course, like a house of cards in the absence of record evidence showing concerted action by two or more persons directed towards some unlawful purpose. The Eighth Circuit dismissed the conspiracy claims not solely because of a determination that the actors were immune but, instead, because of the fact "that the pleadings and record are deficient to create a triable issue as to the participation by any of the defendants in these appeals in a conspiracy to violate the plaintiffs' civil rights" (Joint Appendix F-37).

As in all of their other submissions to the courts in connection with this matter, Petitioners fail to cite any facts which would support a conspiracy claim. The Petitioners were not handicapped by an early filing of dispositive motions. They were beneficiaries and recipients of volumes of facts, reports, and analyses of the Jordan investigation before they ever filed their civil suits. If there was any evidence to support the conspiracy allegations in their complaint, they could and should have presented it to the lower courts. There is no reason for this court to review the decision of the Circuit Court since it is consistent with the case law across the land and supported by decisions such as that of this Court in *Celotex Corporation v. Catrett*, 106 C. Ct. 2548 (1986). Spurious references to Watergate do nothing to enhance Petitioners' right to review.

## 3.

**Negligence/Due Process Claims.**

Petitioners seek review of the decision dismissing their negligence claims. Once again, the Court of Appeals was



correct in concluding that a detailed search of the record failed to demonstrate the existence of any facts to support such claims. Once again, the Court of Appeals' opinion is consistent with the controlling law on this issue. There is no reason for this Court to undertake a review of that determination.

#### 4.

#### **Qualified Immunity For Police Officers.**

Petitioners claim that they were deprived of the opportunity to present evidence which would have led the Court to deny qualified immunity for the police officers in this case. They argue that since the right to be free from arrest without probable cause was clearly established at the time of their arrest, the police officers were not entitled to qualified immunity.

The Eighth Circuit's decision came close upon the heels of this Court's pronouncement in *Malley v. Briggs*, 106 S. Ct. 1092 (1986) and precedes this Court's more recent pronouncements in *Anderson v. Creighton*, 55 L. W. 5092 (85-1520, decided June 25, 1987).

*Anderson* came to this Court after a pre-discovery dismissal motion was made and granted in the trial court. The Eighth Circuit Court of Appeals reversed but this Court has now held that the reversal was error. Borrowing from language in *Anderson*:

"Whether an official protected by qualified immunity may be held personally liable for an alleged unlawful official action generally turns on the 'objective legal reasonableness' of the action,\*\*\*, assessed in light of the legal rules that were 'clearly established' at the time it was taken . . . It should not be surprising . . .



that our cases establish that the right the official is alleged to have violated must have been 'clearly established' in a more particularized and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

*Anderson, supra* 55 L. W., at 5093.

Judge Ross' analysis of the qualified immunity issue reflects just such a "more particularized" evaluation of whether or not the rights claimed to have been violated in this case were "clearly established". Respondents cannot improve upon Judge Ross' description of the unsettled state of the law in the area of child sex abuse and the controversy raging over how such crimes should be properly investigated. In short, the decision of the Eighth Circuit is in accord with the law of this Court and does not deviate on this issue from the decisions of any sister circuits. Review by this Court is not appropriate under the standards set forth in Rule 17.

**CONCLUSION**

Respondents County Attorney and sheriff's officers respectfully request that the Petition for a Writ of Certiorari be, in all respects, denied.

Respectfully submitted,

August 5, 1987

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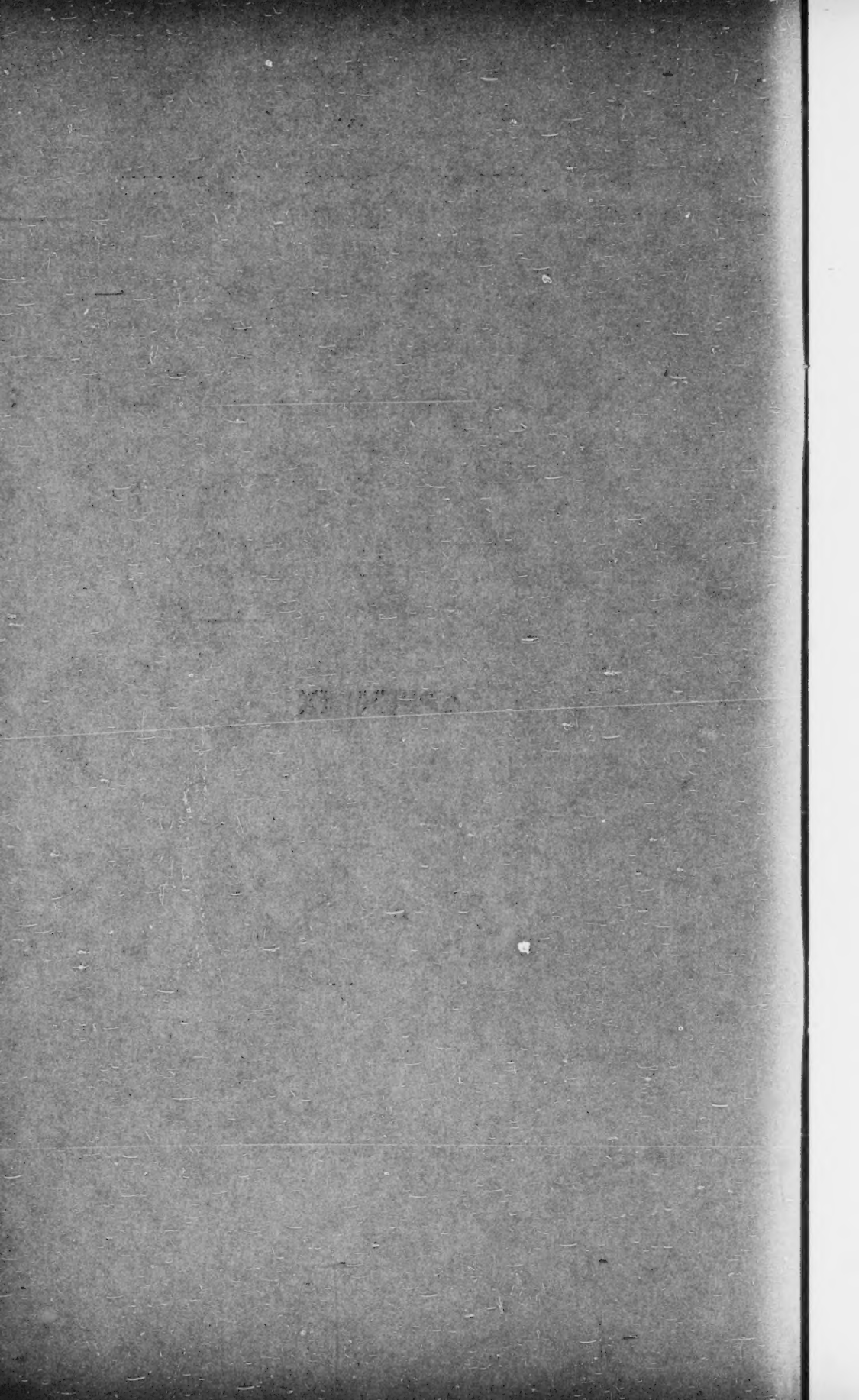
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## **APPENDIX**



A-1

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

IN RE: SCOTT COUNTY CASES  
File No. 3-85-774

STATE OF MINNESOTA)

:ss

COUNTY OF SCOTT )

AFFIDAVIT OF DAVID N. EINERTSON

David N. Einertson, being first duly sworn, deposes upon oath and states as follows:

I.

That he is 40 years old, married, and the father of two children, ages 8 and 12, and employed as a Detective Sergeant with the Scott County Sheriff's Department. He was employed as a probation officer in Scott and Carver Counties from 1971 to mid-1973 after which he has served in the Scott County Sheriff's Department as a crime scene investigator (four years), general patrol (two years), and detective work (six years). In his work experience, your affiant has had substantial involvement in criminal investigations ranging from petty misdemeanors to serious felonies including robbery, kidnapping, criminal sexual conduct, and homicides. He has done contract instruction work for the Bureau of Criminal Apprehension. Your affiant's education includes a Bachelor of Science in Sociology and Psychology. Your affiant has completed several law enforcement courses in a variety of areas. He has had experience in investigating

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criminal sexual conduct involving children and has had wide experience in dealing with juveniles ranging from his experiences as a probation officer up through his role as an investigator in the Cermak matter which included the arrest and convictions and/or pleas of guilty of six different individuals. Your affiant has been involved in several other criminal sexual conduct cases resulting in court convictions or guilty pleas or administrative handling through the Department of Human Services.

### II.

That your affiant's first involvement in the Jordan sex cases was in late October, 1983 and in early November, 1983 when he was a complaining witness against James Rud. He has had general supervisory responsibility over Detectives Pint, Morgan, and Busch from the time of their initial involvement in the Jordan sex cases up through the dismissal of those cases in October, 1984.

### III.

That your affiant has been named as a party defendant in the Lallak action only and that your affiant had no direct involvement in the investigation into the criminal charges against the Lallaks, was not the complainant in the criminal charges that were brought, and did not participate in any conspiracy to deprive the Lallaks of their constitutional or civil rights.

### IV.

That between September 27, 1983 and June 6, 1984, approximately 24 adults from the Jordan area were charged

### A-3

with various counts of criminal sexual misconduct and that case resumes of the proceedings in criminal court and in family court as they apply to the several plaintiffs who have brought lawsuits herein are attached hereto as Exhibits A through H and that your affiant is familiar with the case histories summarized therein and believe the case histories to be true and correct.

### V.

That in all of the criminal charges that were brought and the petitions that were filed in Family Court alleging the existence of juvenile protection matters, the presiding Judge found, in each case, that there was probable cause to support the criminal charges and sufficient facts of information to create a reasonable belief that juvenile protection matters existed warranting the removal of children from the custody of their parents.

### VI.

That in all of the criminal charges that were brought, your affiant's deputies reviewed the proposed complaints with the county attorney who advised your affiant's deputies and other law enforcement officers that there was, indeed, probable cause to support the criminal charges being brought.

### VII.

That your affiant understands and believes that pursuant to M.S.A. 260.165 a police officer has the authority, if not the duty, to remove a child from his or her surroundings if the police officer reasonably believes that the child's health or welfare is endangered by remaining in such surroundings.

That your affiant has personal knowledge concerning the information available to Detectives Busch and Morgan as of February 6, 1984 when the decision was made to remove the Myers children from the Myers home and that your affiant approved of such decision and assigned Detective Norm Pint and Detective Dave Menden to go to the Myers home to remove the children.

### VIII.

That by February, 1984, your affiant believes that Deputy Sheriffs were interviewing as many as 20 or more children who had been identified as victims or suspected victims and that most of these children were in foster homes and subject to the jurisdiction of the court. Your affiant was informed that interviews with such children by law enforcement officers could not be conducted without the appropriate Guardian Ad Litem being present and the task of coordinating the schedules of persons who needed to be present for proposed interviews was becoming quite difficult. It was at this time, also, that many of these children were participating in interview sessions with the county attorney in preparation for testimony to be given by them in various family court hearings and in district court proceedings. There did come a time sometime in the spring, 1984 when your affiant would receive a photocopy of an appointments calendar indicating when particular children were going to be present at the courthouse. Your affiant would show the copy to his deputies so that they could interview a child if that was necessary at the time. These photocopies were routinely discarded shortly after their use. Your affiant no longer has any of these photocopies and was never requested to preserve them.



## IX.

Your affiant also has knowledge concerning a certain video-tape that was made by Detective Pint and Detective Busch on May 22, 1984 during the course of a visit to the Quarry Camp Grounds with Andy and Amy Myers, Tom Price, and Guardian Ad Litem Thompsen. Detective Pint advised your affiant that he intended to obtain such a tape and your affiant varily believes that such a tape was made and returned to the sheriff's office. Your affiant never viewed the tape. Your affiant never received any requests for such a video-tape from Kathleen Morris nor did he ever receive any instructions from her to destroy or erase such tapes as may have been made. Deputies Busch and Pint did report to me after the visit to the camp ground that the tape which had been made was of extremely poor quality and not useable for any purpose.

## X.

That your affiant genuinely believed at all times material that there was probable cause to support each and every criminal charge that was brought against any of the adult defendants in the Jordan sex cases on the basis of the probable cause set forth in the criminal complaints alone. In addition to that information, however, your affiant is aware of an overwhelming amount of other facts which, when considered in combination with each other and with the probable cause set forth in the criminal complaints, created a reasonable belief in the minds of your affiant's deputies and in your affiant's own mind that significant child abuse had been taking place in Jordan and that the persons charged were involved as perpetrators. Such additional facts contributing to the "totality of the circumstances" includes the following:

1. Known family histories of sexual abuse involving the Ruds, Meisinger, Marlene Germundson, and Chris and Helen Brown families;

2. Chris Brown's admission that her oldest daughter (Stacy Krah) was fathered by Chris' father;

3. A history of chemical dependency in a significant number of the families that were involved;

4. Failed polygraph tests;

5. One parent (Robert Bentz) refusing permission to a deputy to interview that parent's children concerning possible sex abuse outside of the Bentz family;

6. Physical evidence of human feces on bowling pins, candles, etc. corroborating stories being told by various child victims:

7. Some adult defendants accusing other adult defendants of criminal sexual misconduct (the accusers include Jim Rud, Irene Meisinger, Marlene Germundson, and Charles Lallak);

8. Wanda Meger making accusations against the Lallaks (see report of Detective Pint dated 6/1/84);

9. The involvement of BCA from the beginning and the concurrence of its agents that the charges being brought were founded upon probable cause (this is particularly true in the Buchan case where the BCA agent, Patrick Shannon, provided all of the information that led to the issuance of the criminal complaint and the determination of probable cause by a judicial officer);

10. Jim Rud's implication of several other adults in Rud's admitted criminal sexual abuse.

XI.

That your affiant has read the complaints in all of the civil actions herein and genuinely does now know what constitutional rights are claimed to have been unlawfully damaged or impaired by the conduct of your affiant and any of his deputies.

FURTHER AFFIANT SAITH NOT.

/s/DAVID N. EINERTSON  
David N. Einertson

STATE OF MINNESOTA)

:ss

COUNTY OF SCOTT )

Subscribed and sworn to before me this 29th day of April, 1985.

/s/BERNICE COLLINS

Notary Public — Minnesota  
Scott County

My Commission Expires July 30, 1991.

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Einartson Exhibit F

CHARLES AND CAROL LALLAK

On May 23, 1984, criminal complaints charging Charles and Carol Lallak with criminal sexual misconduct were prepared and presented to a judicial officer. The judge examined the probable cause set forth in the criminal complaints and found that there was probable cause to support the charges and caused warrants to be issued. Detectives Busch and Morgan and perhaps another police officer were involved in making the arrests. The charges were based upon information supplied by Andy Myers (DOB: 6-19-72) to Detectives Pint and Busch on May 3, 1984; upon infor-

mation supplied by Greg Myers to Pat Morgan on or about February 7, 1984; and upon information supplied by Andy Myers and Amy Myers (DOB: 4-8-79) to Detective Pint on or about May 22, 1984.

There was no detention of the minor children of the Lallak's since the Lallaks had removed the children out of the jurisdiction shortly after the arrest of Greg Myers on or about February 6, 1984.

The defendants made combined first appearances in Court on May 24, 1984. An Omnibus Hearing was scheduled for May 31, 1984. The defendants requested that all proceedings be stayed pending resolution of certain issues in the Appeals Court litigated in another of the Jordan Sex Cases and the request was granted.

Criminal charges were dismissed in October, 1984.

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

IN RE: SCOTT COUNTY CASES  
File No. 3-85-774

STATE OF MINNESOTA)

:ss

COUNTY OF SCOTT )

AFFDAVIT OF MIKE BUSCH

Michael Busch, being first duly sworn, deposes upon oath and states as follows:

I.

That he is 36 years of age and employed as a detective within the Scott County Sheriff's Department and has been

so employed for the past three years. Before that, he was a patrolman for six years. Your affiant received a Bachelor of Arts degree in Criminal Justice from the University of Minnesota in 1975 and an Associate of Arts degree in Law Enforcement from Normandale Junior College in 1972-73. Your affiant served in the United States Army as a Military Policeman and is a Viet Nam veteran. Since becoming employed in the law enforcement field, your affiant has attended various seminars including a 40 hour course dealing with the investigation of criminal sex crimes which was put on at the University of Louisville during the summer of 1983. Your affiant also had on-the-job training from Scott County Detective George Lille (deceased, 1983), who, before his death, was recognized as one of the foremost experts in the field of child sex abuse in the State of Minnesota and who was involved as a supervisory officer in the Cermak sex abuse cases in the early 1980's. Prior to the Fall, 1983, your affiant was involved in at least ten other criminal cases involving sexual abuse of minors and that in several of those cases there were criminal convictions by plea or trial. Your affiant has been called upon by neighboring police departments in the metropolitan area to assist them in criminal sex investigations because your affiant does have a reputation as being a specialist in the field.

II.

That your affiant has been named as a party defendant in the Bentz, Lallak, and Meger cases.

III.

That this affidavit is submitted in support of your affiant's motion for dismissal and/or summary judgment in the ac-

tions referred to in the immediately preceding paragraph and in support of similar motions of the other deputy sheriffs and R. Kathleen Morris in the actions in which they have been sued. Your affiant will summarize his involvement in all of the cases as briefly and concisely as he can and in chronological order.

IV.

That the Scott County Sheriff's Department first became involved in the investigation into the Jordan sex cases in late October, 1983 after James Rud had been charged and arrested on the basis of an investigation done by the Jordan Police Department and the Bureau of Criminal Apprehension in late September, 1983.

V.

That your affiant participated in investigations that led to the charging and arrest of several adult defendants from Jordan in November and December, 1983.

VI.

That child victims identified very early in the investigations as having been abused by James Rud also reported to Jordan police officers that they had been abused by, among others, Tom and Helen Brown. Two of the children victims making accusations against Tom and Helen Brown were the children of Chris Brown (Helen Brown's sister). These children, Stacy Krah (dob: 1/26/74) and John Krah (dob: 7/24/75) along with Vicky Kath (dob: 6/25/73) made statements to police officer Larry Norring, Jordan Police Department, on January 10 and 11, 1984)

indicating that on multiple occasions during the summer, 1983, (1) "Aunt Helen" rubbed Stacy's vagina and performed oral sex on her; (2) that Helen put her finger in Stacy, Vicky Kath, and Brandy Brown's vagina; (3) that Tom Brown performed oral sex on such children; (4) that Helen Brown performed oral sex on John Krahrl and then made him perform oral sex on her and made him suck on her "tits". These activities all took place at Tom and Helen Brown's house. A true and correct copy of the police reports prepared by Officer Norring are attached hereto as Busch Exhibit A. On January 11, Norring relayed the information he had received from the children to your affiant who, on the basis of such information, swore out a criminal complaint charging Tom and Helen Brown with various crimes of sexual misconduct. Your affiant swore to the contents of the complaint (including the reliability of Larry Norring as a source) before a judicial officer who examined the complaint and then signed warrants for the arrest of Tom and Helen Brown. Your affiant had conducted no interviews with either Stacy Krahrl, John Krahrl, or Vicky Kath prior to January 11, 1984 and was not involved in any way in causing any of the three children mentioned above to make accusations against Tom and Helen Brown and further, that to the best of your affiant's knowledge, no other deputies employed with the Scott County Sheriff's Department were involved in any such contacts with the above-mentioned children. A true and correct copy of the criminal complaints filed against Tom and Helen Brown on January 11, 1984 and the warrants issued by the appropriate judicial officers are attached hereto as Busch Exhibits B and C and incorporated herein by reference.



## VII.

That on January 20, 1984, Detective Patrick Morgan swore to criminal complaints against Bob and Lois Bentz based upon facts which had been revealed to him and your affiant in interviews with Jeff Brown (dob: 4/14/73) and Stacy Krah1 (dob: 1/26/74) on January 12, 13 and 20, 1984. More specifically, on January 20, 1984, Jeff Brown described an incident that had occurred at the home of Lois and Bob Bentz during the summer, 1983 in which Bob and Lois Bentz were said to be involved in "hide and seek" games with children including Jeff, his sister, Brandy Brown, Stacy Krah1, Kathy Fossen, Billy Bentz, and Tony Bentz and that the game involved the adults finding the children and then having oral sex with them. Your affiant's report, dated January 24, 1984, concerning his January 20 interview with Jeff Brown is attached hereto as Busch Exhibit D and incorporated herein by reference. Prior to January 20, your affiant had had contacts with Jeffrey Brown on just two occasions (January 11 and January 12) and in the course of the interview with Jeff on January 20, your affiant did not use leading or suggestive questioning nor did your affiant apply pressure upon Jeffrey to make accusations against any adults, but that your affiant instead directed the subject of the discussion to general areas and then asked direct and open-ended questions. For example, your affiant might say the following: "Jeff, this morning I want to talk to you about any sexual touching between adults and children that you may have seen or been involved in at Chris Brown's house. Did you ever see such activities? . . ." When Jeff, then 11 years of age, would answer, further questions would be asked to determine the meaning of the words that he might use to describe



sexual activities and as much detail would be obtained concerning each event that might be described. This was your affiant's practice in dealing not only with Jeff Brown, but all other child victims whom he encountered in the course of his investigation into the Jordan sex cases.

### VIII.

That in respect to the Bentz family, your affiant did contact Mr. Robert Bentz by phone. The purpose of the call was to request permission to speak with his children whose names had come up as possible victims in interviews with other children. Mr. Bentz was reluctant to permit such interviews and asked if he would be allowed to be present during the interviews. Your affiant told him that such would be allowed, but that your affiant's preference was that he not be present. Mr. Bentz stated that he would discuss the matter with his wife and then get back to your affiant. The following day, your affiant called Mrs. Bentz and she stated that your affiant would not be permitted to interview the Bentz children under any circumstances.

### IX.

That on the basis of the information supplied by Jeff Brown to your affiant and that provided by Stacy Krah1 to Deputy Morgan, your affiant was satisfied as of January 20 that there was probable cause to believe that Robert and Lois Bentz were guilty of various crimes involving criminal sexual misconduct. Your affiant believed Jeff Brown to be a reliable witness at that point based upon the fact that (1) his statements were consistent with statements being made by other children concerning various adults; (2) he was "street-wise" and seemed quite familiar with sexual termi-

nology and jargon; (3) Jeff was closely associated with the Chris Brown family wherein there was undisputed evidence of incest, a history of domestic disputes which your affiant had been called out on over the years, and a history of chemical dependency affecting members of the Brown family including Tim Brown. Further, your affiant reasonably believed as of that date that the health and welfare of the Bentz children were in danger by their continued presence in the Bentz home. Your affiant withheld no material information from the county attorney nor from the judge before whom the complaint was signed and sworn to. A copy of the criminal complaints, the police reports relied upon, and the warrant based upon probable cause issued by the court are attached hereto as Busch Exhibits E, F, and G and incorporated herein by reference.

#### X.

That on February 6, 1984, your affiant and Detective Pat Morgan performed a probable cause arrest upon Greg Myers at the Jordan police department. This arrest followed separate interviews with three different children who had been sexually abused by him. The first of these children, Jeff Brown, had stated in an interview with your affiant at the Scott County sheriff's office that he had witnessed sexual events involving Greg Myers and child victims which occurred during 1983 at the Quarry Camp Ground and at the Tom and Helen Brown residence. Jeff's Guardian Ad Litem, Diane Johnson, was present during the interview. Detective Pat Morgan, at a separate time and location in the courthouse, interviewed Brandy Brown (then nine years of age) in Diane Johnson's presence. Brandy told Detective Morgan about an incident at the Quarry Camp Ground

which involved sexual touching between Greg Myers and children victims. After conferring with Detective Morgan, your affiant re-interviewed Brandy Brown and the substance of what she told your affiant is set forth in a report dated February 7, 1984. After the Brand and Jeff Brown interviews, your affiant interviewed Kathy Fossen, then 12 years of age. The interview occurred at the Scott County sheriff's office and within listening distance of Kathy's mother, Anita Fossen. Kathy Fossen described several incidents that had occurred during the summer, 1983 in which Greg Myers, who she described as a policeman with the Jordan Police Department, had performed sexual acts with children, including her. This interview was only the second time that your affiant had ever had any contact with Kathy Fossen (the first time being on January 27, 1984) and to your affiant's knowledge, Kathy Fossen had not previously had any contacts with Detective Morgan or Detective Pint. Your affiant determined that the information being provided by Kathy Fossen was reliable because (1) she was still living at home with her parents and had no known reasons to fabricate any accusations against anybody, (2) other child victims had repeatedly referred to Kathy Fossen as having been a victim in various sexual incidents with adults, (3), Kathy, herself, was admitting that she had been involved sexually with other kids, and (4) her demeanor was such that your affiant believed her to be telling the truth. The reports of the interviews with Jeff and Brandy Brown and Kathy Fossen are dated February 7 and are attached hereto as Busch Exhibits H, I, and J. Prior to February 6, 1984, your affiant did not have specific information indicating that Greg Myers had been involved in sexual activities at the Quarry Camp Grounds or at the

Helen and Tom Brown residence during 1983. Such information was revealed by the above-named child witnesses in separate interviews for the first time on February 6, 1984. Based upon the information that had been provided, together with other information establishing that Greg Myers had been at the Quarry Camp Grounds at the time indicated by the child witnesses and information also linking Greg Myers with other adults who had been previously charged with criminal sexual misconduct (including the Bentz's and the Browns), your affiant determined that there was probable cause to believe that Greg Myers had been involved in criminal sexual misconduct with children and your affiant further reasonably believed that the safety of the Myers children was in jeopardy by their continued presence in the Myers' home. It was on that basis, together with advice from the county attorney that probable cause existed, that a probable cause arrest was made of Greg Myers on February 6. On February 8, 1984, your affiant swore out a criminal complaint against Greg Myers before a judicial officer who examined the complaint, determined that probable cause did exist, and issued an Order of Detention based upon such probable cause. A copy of the Complaint and the signed Order of Detention is attached hereto as Busch Exhibit K and incorporated herein by reference. The interviews with Jeff and Brandy Brown and Kathy Fossen had been scheduled by your affiant or by someone else in the sheriff's office prior to February 6 as part of the on-going investigation into the Jordan sex cases. These interviews were not requested or ordered by R. Kathleen Morris. These interviews had been scheduled and accomplished strictly at the discretion of investigators in the sheriff's department.

## XI.

On May 23, 1984, your affiant was the complainant in criminal charges that were prepared and filed against Duane and Dee Rank, Carol and Charles Lallak, and Jane Myers. The complaints were based upon information received in interviews with Andy Myers on May 3 and May 22, 1984; with Amy Myers on May 15 and May 22, 1984; and from information previously supplied by Jeff Brown, Brandy Brown, John Krah, and Greg Myers. Key information included the fact that on or about February 7, 1984, Greg Myers had voluntarily taken two separate lie detector tests and had failed such tests. He had stated to your affiant on or about that date that certain people had been at the Quarry Camp Ground in the summer, 1983 as was being alleged by a variety of child victims. The fact that Greg Myers had failed two lie detector tests added, in your affiant's opinion, to the credibility of child victims who were making accusations against him including the credibility of Andy and Amy Myers. On or about May 3, 1984, your affiant received information from Tom Price concerning information being provided by Andy Myers which implicated additional adults as perpetrators of sexual abuse upon child victims. Your affiant conferred with Mr. Price on May 3 and learned from him the details of what had been disclosed by Andy Myers in a therapy session that had taken place approximately one week earlier. Your affiant then participated in an interview with Andy Myers at 1:30 P.M. at the office of Tom Price. The interview took place in the presence of Detective Pint and Guardian Ad Litem Paul Thomsen. In the interview, Andy Myers disclosed incidents of sexual abuse occurring at the Quarry Camp Grounds including an incident where Andy was sep-

arately assaulted sexually by seven different adults including his mother and step-father. Andy indicated that the incident took place at the camp site of Tom and Helen Brown. Andy drew a sketch of the area which, upon your affiant's own personal knowledge, largely coincided with certain sites where certain of the adults who he identified were on record as having been present at the camp ground at the time described by Andy. In the interview, Andy also described an incident occurring at Tom and Helen Brown's residence which involved sexual involvement between adults and children. Some of the allegations made by Andy on May 3 implicated Duane and Dee Rank and Charles and Carol Lallak. Your affiant, however, believed that further investigation was appropriate since, among other things, your affiant knew that no children were then in jeopardy. The Ranks had no children. The Lallaks had previously dispatched their children outside of the jurisdiction. The Myers' children were already in foster homes. Investigation continued on May 15, 1984 with an interview of Amy Myers at the office of Tom Price on May 15, 1984. Present at the time of this interview was Tom Price, Detective Pint and your affiant. Paul Thomsen could not be present at the time and designated Mr. Price as the third person to be present during the interview in accordance with a prior Court Order which allowed for such designation. Prior to the interview, your affiant spoke with Tom Price who advised that during prior therapy sessions, Amy had discussed being sexually abused by adults and having seen other children being sexually abused. In the course of the interview which followed (approximately 50 minutes in length), Amy provided information which corroborated the information previously given by Andy and others. Dur-



ing the interview, Detective Pint asked Amy why she had not talked about these things on prior occasions and she stated at that time that on prior occasions she had been "pretending when she stated nothing had happened." See attached Busch Exhibit L. Detective Pint advised that Amy had not previously denied such activities, but merely had failed to disclose them. As a part of the continuing investigation, your affiant accompanied Detective Pint, Tom Price, Paul Thomsen, and Andy and Amy Myers in a visit to the Quarry Camp Grounds on May 22, 1984. Detective Pint attempted to make a video tape of various areas at the camp ground and interviews with the children at the camp grounds were also video-taped. During the interviews, Amy and Andy Myers repeated what they had stated on May 3 and May 15. They did not make statements which tended in any way to exculpate any of the adults previously charged or to be charged on May 23. Your affiant viewed at least a portion of the video tape of the interview at the sheriff's office afterwards and recalls that it was of extremely poor technical quality. Extraneous noise (wind, airplanes, background noise) masked what was being said by the children or by their interviewers to a large extent. The video portion was inadequate. Strangers were depicted on the tape which would have made the tape useless as demonstrative evidence. Upon information and belief, Detective Pint returned to the camp grounds one week later, without anybody else, in order to portray areas where the children had described events having taken place. He taped over the May 22 tape. Kathleen Morris did not, to your affiant's knowledge, see the tape and, to your affiant's knowledge, did not order or request that it be erased.

## XII.

Prior to May 3, 1984, your affiant had never met Tom Price. Prior to May 3, your affiant had no contacts with Andy Myers except possibly on one occasion, (approximately February 13, 1984) when your affiant's notes indicate that Andy had made a statement at the sheriff's office indicating that his step-father, Greg, had previously told him not to talk to police without his step-father being present. Prior to May 15, 1984, your affiant had never had any interviews with Amy Myers. In addition, your affiant is informed that on February 7, 1984, Greg Myers confirmed that the Ranks and the Lallaks were at the camp grounds with Greg Myers and his family at the time being indicated by Andy and Amy Myers.

## XIII.

That at the time of the May 22, 1984 visit to the camp grounds, most of the information concerning locations where sexual incidents had occurred was provided by Andy Myers. The purpose of the interview was not to obtain information concerning the fact that incidents had occurred, but rather to determine as precisely as possible *where* they had occurred. There was no "cross-germination" of information between Andy and Amy.

## XIV.

That on the basis of the information furnished by the Myers children on May 3, 15, and 22, the information previously furnished by Greg Myers, and statements from Jeff Brown, Brandy Brown and Jeff Krah1 placing the Ranks, Lallaks, and the Myers families at the camp



grounds at the times being described by Andy Myers and Amy Myers, your affiant swore out criminal complaints against Duane and Dee Rank, Charles and Carol Lallak, and Jane Myers. The complaints were sworn to before the Honorable Martin Mansur and he examined the contents thereof and issued probable cause warrants on May 23, 1984. Each of the complaints had been prepared in the county attorney's office and your affiant was informed by the county attorneys' office that the information known to your affiant did constitute probable cause to charge and arrest the above-named individuals. At no time during any of your affiant's prior interviews with Andy or Amy Myers (three times) had either of them denied having been sexually abused by the persons who were charged on May 23 nor was your affiant aware of any other information or evidence as of May 23 tending to exculpate the persons who were charged on that date. Copies of the criminal complaints in each of the charges brought above are attached hereto as Busch Exhibits M, N, O, P, and Q. Your affiant's investigative reports dated May 15, 16, and June 4, 1984 are attached hereto as Busch Exhibits R, S, and T.

Your affiant is the complainant in many of the criminal complaints that were filed against the plaintiffs in these civil actions. At no time did your affiant sign a criminal complaint which contained information that he had not personally developed or received from another law enforcement officer. An example of the former situation is the complaint against the Browns which your affiant signed based upon the information supplied to him by another police officer, Larry Norring. There were occasions in the late Winter and Spring, 1984 where

new information was passed along to your affiant from the county attorney's office because of something that had been said by a child witness during a court preparation session. At no time did your affiant sign a complaint which included that information unless and until your affiant or another law enforcement officer personally contacted the child witness in question in order to determine what facts were known and whether the information was reliable. Your client would not add and did not sign a complaint containing information supplied by a prosecuting attorney or by any other source (therapists, guardian ad litem, child protection workers, etc) without your affiant personally determining what the facts were.

FURTHER AFFIANT SAITH NOT.

/s/ MICHAEL BUSCH  
Michael Busch

STATE OF MINNESOTA)

)ss

COUNTY OF SCOTT

Subscribed and sworn to before me this 30th day of April, 1985.

/s/ MARLENE KOCH

Marlene Koch

Notary Public - Minnesota ,  
Scott County

My Commissioner Expires  
Dec. 8, 1988

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AUG 13 1987

JOSEPH F. SPANIOL, JR.  
CLERK

No. 87-61

IN THE  
**Supreme Court of the United States**

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CHARLES LALLAK, etc., et al.,

*Petitioners,*

vs.

R. KATHLEEN MORRIS, etc.,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

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**RESPONDENT PRICE'S  
BRIEF IN OPPOSITION  
TO PETITION FOR CERTIORARI**

---

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**QUESTIONS PRESENTED FOR REVIEW  
(VERBATIM FROM PETITION)**

I. Is a prosecutor absolutely immune from liability under 42 U.S.C. § 1983 regardless of the fact that she took over a child sex abuse investigation, directed the isolation of potential child complainants from their families in violation of federal and state law, repeatedly interrogated and manipulated the children, such that their testimony became accusatory and foreseeably unreliable, destroyed exculpatory evidence, and conspired with other county employees and their agents in these activities and a cover up?

The Court of Appeals for the Eighth Circuit held: in the affirmative.

II. Do parents and children lose the familial protections afforded by the United States Constitution merely because an assertion has been made alleging that the children have been sexually abused by the Parents?

The Court of Appeals for the Eighth Circuit held: in the affirmative.

III. Do allegations of a conspiracy to violate civil rights between a prosecutor, sheriff and his deputies, social workers, therapists and guardians pierce the co-conspirators' immunities when acts taken in furtherance of the conspiracy include prosecutorial investigation; suppression of exculpatory evidence and presentation of false and misleading information at probable cause, pretrial and final hearings; and engaging in activities foreseeably damaging to the mental health of the children in violation of court order in which the co-conspirators were required to serve the best interests of the children?

The Court of Appeals for the Eighth Circuit held: in the negative.

IV. Does grossly negligent conduct by state officials rise to the level of a constitutional tort?

The Court of Appeals for the Eighth Circuit held: in the negative.

V. Are "therapists" and guardians ad litem absolutely immune from liability under 42 U.S.C. §1983 when acting outside the scope of their court-ordered authority and engaging with police in investigative activities, in clear disregard of the psychological damage such activities entail to the children involved in the court proceedings?

The Court of Appeals for the Eighth Circuit held: in the affirmative.

VI. On a pre-discovery *Harlow v. Fitzgerald* summary judgment motion, where plaintiffs have not had the opportunity to present evidence in support of their complaint allegations, can an appellate court make the factual determination that police officers and other officials are immune because they acted in good faith?

The Court of Appeals for the Eighth Circuit held: in the affirmative.

VII. Are Deputy Sheriffs immune from suit under 42 U.S.C. §1983 when the criminal complaint regarding the Lallaks attested to by the arresting officer was facially invalid and when the officers either knew the allegations to be untrue or could not maintain a reasonably objective belief as to the truthfulness of the allegations.

[Petitioners did not provide the Eighth Circuit's holding on this issue. The Eighth Circuit held in the affirmative.]

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IN THE  
**Supreme Court of the United States**

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**No. 87-61**

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CHARLES LALLAK, etc., et al.,  
*Petitioners,*

vs.

R. KATHLEEN MORRIS, etc.,  
*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

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**RESPONDENT PRICE'S  
BRIEF IN OPPOSITION  
TO PETITION FOR CERTIORARI**

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**STATEMENT OF CASE**

In 1984, the Adult Petitioners were charged with sexually abusing children. The Scott County Human Services Department commenced dependency/neglect proceedings and many children were removed from their homes and placed in temporary foster homes, pursuant to Court order. However, the Lallak children were not removed from their home.

In late 1984 and early 1985, these Petitioners commenced civil rights lawsuits against virtually everyone who was in any way involved in their arrest or in the dependency/neglect proceedings, with the exception of the respective juvenile Court judges. Respondents moved the Court for summary judgment early in the proceedings. The Court held a series of several hearings on the summary judgment motions, and issued a series of "flash" orders shortly after each hearing, ruling on each motion. The Court later prepared a comprehensive opinion detailing its various rulings and the rationales therefor, reported under the name *In Re: Scott County Master Docket*, 618 F.Supp. 1534 (D. Minn. 1985). (G-1).<sup>1</sup> Therapist Thomas Price was granted summary judgment as a part of that order.

The district court's order was appealed to the Eighth Circuit. Petitioners argue that the Eighth Circuit, without notice to the parties, treated the summary judgment motions decided by the district court as post-discovery submissions. The record before the Eighth Circuit did include material that was not before the district court at the time it issued the order on summary judgment motions. The first attempt to include material outside the district court record, however, was made by Petitioners' counsel in the *Lallak* case. On October 10, 1986, the Lallaks brought a Motion to Reconsider the Dismissal of Respondents Price and Norring. (R-281). As a part of that motion, Petitioners supplemented the record with evidence

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<sup>1</sup>References denominated "A" through "I" are to the Petitioners Joint Appendix. References denominated "RA" are to Respondent Thomas Price's Appendix. References denominated "R" are to the designated record presented to the Eighth Circuit Court of Appeals.

obtained through discovery *after* the motion was submitted to the district court. Discussions in briefs that referred to material outside the record first appeared in Petitioners' brief. To resolve disputes regarding the designated record, the Court of Appeals ultimately issued two orders in April of 1986 providing for supplementation of the record.<sup>2</sup>

By decision dated February 3, 1987, the United States Court of Appeals for the Eighth Circuit held that all Respondents were immune from liability. The Eighth Circuit denied a petition for rehearing and rehearing en banc on April 9, 1987.

Counsel for the plaintiffs in the *Myers* and *Buchan* cases filed a petition for a writ of certiorari to this Court in *Myers v. Morris*, No. 86-2016, on or about June 12, 1987. Respondent Thomas Price filed a brief in opposition to that petition on July 13, 1987.<sup>3</sup>

Respondent Thomas Price was a defendant in the *Myers*, *Buchan* and *Lallak* cases. Thomas Price is a psychotherapist associated with Phipps-Yonas and Price, P.A. (R-471). Price's principal connection with these cases is through his contact with the Myers children.

On February 6, 1984 Greg Myers was arrested. (R-10). Scott County Family Court, Judge Young, held a hearing on February 13, 1984. (R-65). Judge Young found probable cause to believe that a juvenile protection matter

<sup>2</sup>The Eighth Circuit rejected Petitioners' argument that the record should not have been considered, relying on *Kompare v. Stein*, 801 F.2d 833 (7th Cir. 1986) (holding that in deciding immunity issues, it is not necessary to accept as true allegations without factual support when the record contains relevant evidence).

<sup>3</sup>Portions of this brief are either similar or identical to the brief filed on behalf of Thomas Price in the *Myers* case. Instead of making repeated references to that brief, those portions are reprinted here for the convenience of the Court.

existed and that the return of the children to the parents would endanger their welfare. (R-65). The court assumed custody of the children and directed:

That the three above-named children shall be *evaluated by Tom Price to determine their counseling needs or issues that need to be addressed* as scheduled by Scott County Human Services.

(R-65) (Emphasis added).

Pursuant to this order, Paul Thomsen, guardian ad litem for the Myers children, asked Price to evaluate the Myers children to see if abuse occurred and to assess the counseling needs of the children. (R-471; RA-53, 54). Paul Thomsen also requested a psychological evaluation. (R-471). Since Price is not a Psychologist, he referred the psychological testing to Dr. Judy Bevans who is a licensed psychologist with the Minneapolis Public Schools. (R-471).

When Price received the written evaluation from Judy Bevans, he immediately turned it over to the guardian ad litem for distribution pursuant to the court's order. (R-472). Price was not authorized to give the evaluation to anyone other than the guardian ad litem. (R-66). Price did not give the evaluation to Kathleen Morris. (R-472).

Price testified on April 19 before Judge Young. (R-558). The Court called Price to give his advice about the best way to protect the well being of the children. At that hearing, Price testified that he had seen Andy Myers eight times and Amy six times, for 50 minutes per session. (R-560). Price told the judge that the children had not yet alleged abuse. (R-564; RA-43, 44). The Court asked Price to "[lay] aside any legal considera-

tions" and give his professional opinion about the impact on the children of returning home. (RA-42). Price prefaced his comments by stating that his suspicions of sexual abuse were based solely upon the behavior he had observed in the children. (R-564). Price described how Andy turned white and trembled when informed that he might return home. (R-563; RA-43). Andy stated "not with my dad home" and "Amy and Brian can't go home." (RA-43). Andy refused to say why he did not want to go home. *Id.* Price told the Court that Andy described having visions, but could not relate the content of the visions. (RA-43). Price related how Amy said that she had bad secrets that she could not talk about involving both her mom and dad. (RA-44). Price explained that although Amy refused to tell about the content of the secrets, she grabbed at her vaginal area, and rubbed a play thermometer on her vaginal area when talking about the secrets. Due to the symptoms exhibited by the children, Price did not recommend return of the children to the family. (RA-45).

Price acknowledged to the Court that he could be wrong about the alleged abuse. He told the Court that Andy was emotionally fragile and could have a nervous breakdown. (RA-47). The Court expressed concern as follows:

The Court: Don't we run the risk that the system itself might be doing these things?

Price: Absolutely.

The Court: What are we going to do about it?

Price: Your Honor, quite frankly, I have laid awake nights thinking about that: I don't know. One of

the things that I have said is, I don't want to become the abuser in this case. I don't want to push these kids so hard in terms of what has happened to them that I in affect become abusive. *I guess I will leave it to the wisdom of the Court what we are going to do.* I don't know for sure. I believe that something has happened to these kids. I believe that they have a lot of earmarks of having been sexually abused. *I believe that for their ultimate emotional well being, we have to find out what that was and we have to provide treatment, but that is going to take time. I wish I could tell the Court and the kids how long that was going to take. I can't.*

April 19, 1984 hearing. (RA-47, 48) (Emphasis added). Price has never talked to any of the Lallak children. (R-473). His single involvement with Missy Buchan took place in June of 1984. (R-473). BCA agent Pat Shannon was present during this interview and has testified that Price's conduct was proper. (RA-9, 10).

Price talked with Jeff Brown once on July 16, 1984. (RA-14). This contact was for the express purpose of assisting Price in his evaluation of Andy Myers. (RA-16). Jeff's therapist was present during this interview and testified that Price's conduct was appropriate. (RA-15). Price never rendered a professional opinion regarding Jeff Brown, the Lallak children or the Buchan children.

### SUMMARY OF ARGUMENT

The petition does not genuinely respond to the considerations governing review by this Court. The issues raised were properly decided by the Eighth Circuit on a complete record.



Petitioners have not raised an issue of fact regarding Respondent Price's alleged involvement in a conspiracy to violate Petitioners' civil rights. Petitioners have failed to establish that Price was not protected by absolute immunity for his quasi-judicial functions. None of the issues raised by Petitioners warrant review by this Court.

### ARGUMENT

As a preliminary matter Petitioners have failed to satisfy the requirements of Rule 17. Each of Petitioners' questions presented for review, as presented and argued, fails to set forth a reviewable issue under Rule 17. The Petitioners have established no genuine conflict among federal courts of appeals. Nor have they established that the Eighth Circuit's decision was in conflict with any decision of this court. Finally, Petitioners have failed to present an issue which has not been decided by this Court.

Furthermore, Petitioners have not complied with Supreme Court Rule 21.4 which governs page limitations for petitions. The petition is twenty-three (23) pages long. In addition, Petitioners "incorporate by reference" the Statement of Facts and Argument contained in the petition filed in the *Myers* case. See Petition at p. 5. The *Myers* petition is twenty-two (22) pages long. Therefore, the Lallaks' petition exceeds the page limitation set forth in Supreme Court Rule 21.4. The Lallak petition does not present an argument independent of the *Myers* case. The entire petition consists of a 23 page recitation of the facts. The Lallak petition merely adopts the argument presented in the *Myers* petition. Accordingly, the Petition for Writ of Certiorari should be denied on that basis alone. See Supreme Court Rule 21.5.



## I.

**Petitioners Have Presented No Reviewable  
Conspiracy Issue**

Petitioners have not identified the appropriate issue concerning Respondents' alleged conspiracy to violate their civil rights. Petitioners ask this Court to consider whether allegations of a conspiracy to violate civil rights are sufficient to pierce the conspirators' immunities. Petitioners then identify several separate and independent acts allegedly taken in furtherance of the conspiracy that purportedly justify the allegations.<sup>4</sup> They assert that, in light of those acts, the Eighth Circuit erred when it found no triable conspiracy issue.

None of the alleged acts enumerated in support of Petitioners' conspiracy argument create a fact issue regarding whether Respondents engaged in a conspiracy. The focus of the Eighth Circuit's conspiracy analysis was the lack of evidence establishing a conspiratorial purpose.

A showing of conspiracy requires evidence suggesting that the Respondents "reached an understanding" to violate the Petitioners' civil rights. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970). To create a genuine issue of conspiracy, Petitioners must allege facts supporting a "meeting of the minds." *Deck v. Leftridge*, 771 F. 2d 1168, 1170 (8th Cir. 1985). See also *White v. Walsh*, 649 F. 2d 560, 561 (8th Cir. 1981), quoted in *Smith v. Bacon*, 699 F. 2d 434, 436-37 (8th Cir. 1983) (party

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<sup>4</sup>Petitioners identify the following acts which were allegedly taken in furtherance of the conspiracy: prosecutorial investigation; suppression of exculpatory evidence and presentation of false and misleading information at probable cause, pre-trial and final hearings; and engaging in activities foreseeably damaging to the mental health of the children in violation of court order in which the co-conspirators were required to serve the best interests of the children.

must allege that "the defendants had directed themselves toward an unconstitutional action by virtue of mutual understanding" and provide some facts "suggesting such a 'meeting of the minds'").

Petitioners argue that the Eighth Circuit's holding is in conflict with the decisions of other federal courts of appeals.<sup>5</sup> In support of this illusory conflict, petitioners cite *Hooks v. Hooks*, 771 F. 2d 935 (6th Cir. 1985) and *Anthony v. Baker*, 767 F. 2d 657 (11th Cir. 1985). In both *Hooks* and *Anthony* the Courts were presented with triable issues of conspiracy defeating immunity. In both cases, however, the plaintiffs had established facts to support a meeting of the minds directed toward some unconstitutional action. The Courts' decisions did not turn upon whether a conspiracy took place.<sup>6</sup>

In this case, on the other hand, the Eighth Circuit was faced with that precise issue. The Court was unable to find that the Respondents participated in a common plan. Contrary to the position advanced by the Petitioners, Respondent Price did not conspire with Morris and others to obtain the arrest of the Petitioners in order to "invent a sex ring" and advance the career of Scott County Prosecutor Kathleen Morris. The Eighth Circuit concluded that the record provided no evidence of a common plan to advance Morris' career:

<sup>5</sup>In attempting to create a conflict among the circuits, Petitioners misquote the Ninth Circuit. See *Myers* petition at p. 14. Petitioners allude to the Ninth Circuit's remarks concerning *Stump v. Sparkman*, 435 U.S. 349 (1978), when in fact the Ninth Circuit was discussing a completely different case. See *Ashelman v. Pope*, 793 F.2d 1072, 1077 at n.2 (9th Cir. 1986).

<sup>6</sup>The *Hooks* and *Anthony* courts focused upon whether the defendants were entitled to good faith immunity from suit. *Hooks v. Hooks*, 771 F.2d 935, 942 (6th Cir. 1985); *Anthony v. Baker*, 767 F.2d 657, 664 (10th Cir. 1985).

Why this diverse group of personalities and offices should have cooperated with each other in a scheme to advance R. Kathleen Morris' career is clarified nowhere in the pleadings, record or briefs. Moreover the record contains evidence wholly inconsistent with this allegation of common purpose. Specifically the record strongly suggests that the investigative effort was riddled with personality conflicts and jurisdictional frictions among, for example, the prosecutor and the sheriff, the sheriff and the Jordan police chief, and even the sheriff and the BCA.

810 F. 2d at 1453. (F-35).

In addition to failing to establish the required meeting of the minds, Petitioners have not established a conspiratorial purpose to which Respondent Thomas Price could have contributed.

Therefore, the Eighth Circuit properly concluded that:

[a] conclusory and unsupported allegation of conspiratorial purpose fails to defeat an assertion of qualified immunity by a defendant otherwise entitled to that defense. We conclude, in addition, that the pleadings and record are deficient to create a triable issue as to the participation by any of the defendants in these appeals in a conspiracy to violate the plaintiffs' civil rights.

810 F. 2d at 1453-54. (F-35).

Absent a colorable claim of conspiracy, the inquiry focuses upon each individual Respondent's actions, in light of their cloak of immunity.

## II.

**Petitioners Have Raised No Reviewable Issue  
Regarding Price's Absolute Immunity.**

This Court's decision in *Briscoe v. LaHue*, 460 U.S. 325 (1983), provided that all persons, governmental or otherwise, who are integral parts of the judicial process are entitled to absolute judicial immunity from damage liability under 42 U.S.C. §1983. The Eighth Circuit held, consistent with *Briscoe*, that Price was entitled to absolute immunity for his testimony before the family court, and his reports and recommendations to the family court.

Respondent Thomas Price acted under the Court's direction as a therapist for the Myers children. Price is entitled to absolute immunity for this quasi-judicial function. Several Courts of Appeals have recognized that absolute immunity extends to quasi-judicial officers who act as an arm of the judiciary. *See Childs v. Reynoldson*, 777 F. 2d 1305 (8th Cir. 1985), recognizing that quasi-judicial immunity extends to a State Board of Law Examiners:

We also agree with the District Court's reasoning that the members of the Iowa Board of Law Examiners "acted as an arm of or surrogate for the Supreme Court of Iowa," and that they are entitled to absolute quasi-judicial immunity.

777 F. 2d at 1307.

The rationale for this decision is sound. In various types of judicial proceedings, a judge cannot perform all of the necessary judicial functions by himself, and must rely on quasi-judicial officers for assistance. The Iowa law examiner case is one example; while the power to admit per-

sons to practice law is a paradigm judicial function, a state Supreme Court cannot personally review every application for admission, and hence must delegate a portion of its judicial function to others. A person who acts as an arm or surrogate for the judiciary in such a context is entitled to share the Court's absolute immunity from liability. *See also, Mills v. Killebrew*, 765 F. 2d 69 (6th Cir. 1985) (lawyers who served on mediation panel held to serve a quasi-judicial function and therefore absolutely immune).

Similarly, in *Lawyer v. Kernodle*, 721 F. 2d 632 (8th Cir. 1983), the Court held that a pathologist engaged under a statute to perform official duties enjoyed the same immunity privilege that the appointing officer could assert, citing *Bartlett v. Weimer*, 268 F. 2d 860 (7th Cir. 1959) (court appointed physician held absolutely immune) and *Burkes v. Callion*, 438 F. 2d 318 (9th Cir. 1970) (court appointed psychiatrist held absolutely immune).

The Eighth Circuit agreed that nonjudicial persons fulfilling quasi-judicial functions share the absolute immunity of the court. The Eighth Circuit relied on *Kurzawa v. Mueller*, 732 F. 2d 1456 (6th Cir. 1984), holding that a court-appointed therapist and guardian ad litem were entitled to absolute immunity. The Eighth Circuit's holding was correct since the Respondent Price was appointed by the Court and acted at the Court's direction. Other courts have reached the same conclusion. *See, e.g., Kermit Construction v. Banco Credit*, 547 F. 2d 1 (1st Cir. 1976); *Byrne v. Kysar*, 347 F. 2d 734 (7th Cir. 1965); *Duzynsk v. Nosal*, 324 F. 2d 924 (7th Cir. 1963); *Phillips v. Singleary*, 350 F. Supp. 297 (D.S.C. 1972); *Thompson v. Sanborn*, 568 F. Supp. 385 (D.N.H. 1983); *Demoran*

*v Witt*, 781 F. 2d 155 (9th Cir. 1980).<sup>7</sup>

Since Respondent Thomas Price acted as an arm of the Court and on its behalf, he shares in the absolute immunity of the Scott County Judge that appointed him. All of Price's actions fall within the scope of Judge Young's directive to Price to "evaluate the needs of the children and other issues that need to be addressed as directed by the Scott County Human Services." (RA-65).

Petitioners argue that Price's "illegitimate conduct" should not be protected by absolute immunity. After the Court disposes of the groundless conspiracy claim, Petitioners' only argument to defeat absolute immunity is to claim that the Eighth Circuit erred in holding that Price's actions were within the scope of his court appointment, and therefore protected by absolute immunity. The record contains no disputed facts concerning Price's conduct.<sup>8</sup>

When Price was appointed by the Court, he was contacted by Paul Thomsen, guardian ad litem for the Myers children and licensed attorney. Thomsen told Price that he was to perform an evaluation of the Myers children "to see if abuse had occurred and to assess and meet the ongoing counseling needs of the children." (RA-53). On April 19th, Price appeared for the first time in juvenile court. Price unequivocally told the Court that he felt that it was necessary for him to find out what happened to the children and to provide treatment to protect their ultimate emotional well-being. Price stated:

<sup>7</sup>Petitioners argue that several courts of appeals have limited *Briscoe* immunity. The cases cited by Petitioners create no conflict with the decisions of this Court or the Eighth Circuit's decision in this case. Those decisions are merely procedurally and factually distinguishable. See *Myers* Petition at p. 17.

<sup>8</sup>Petitioners make several statements regarding Price's conduct in their Statement of the Case. Petitioners make no citations to the record or the appendix to support those statements.



I believe that something has happened to these kids. I believe that they have a lot of earmarks of having been sexually abused. I believe that for their ultimate well being we have to find out what that was and we have to provide treatment, but that is going to take time. I wish I could tell the court and the kids how long that was going to take. I can't.

(RA-48). At no time did the Court tell Price not to find out what happened to the children. If Price had not attempted to verify the allegations made by his patients before giving his professional opinion to the court he might have been sued for violating civil rights on that ground. *See, e.g., Dick v. Watonwan County*, 551 F. Supp. 983, 993 (D. Minn. 1982).

On April 19, 1984, Price appeared before Judge Atkins rather than Judge Young. Judge Atkins ratified Price's past conduct and proposed future conduct implicitly. He said nothing to indicate Price was conducting himself inappropriately. On July 11, 1984, Price appeared in Scott County Juvenile Court once again, this time before Judge Young. Price testified at length about the scope and nature of his appointment, *as he understood it*. Judge Young gave no indication that Price's understanding was incorrect. (RA-53).

On October 12, 1984, Price appeared for the third time in Scott County Juvenile Court, once again before Judge Young. At this hearing, Petitioners' attorney himself told the Court that he believed Tom Price was acting in a good faith belief pursuant to the Court order:

Kurzman: *So am I correct in my assumption that your activities including those of September 25 and the other activities that you have been involved in have been in your mind under the auspices of*

*the direction by this Court in February of 1984 to determine their counseling needs or issues of needs to be addressed as scheduled by Scott County Human Services?*

Price: *Certainly issues that need to be addressed, yes.*

- Kurzman: Your Honor, that is why I have asked these questions. *I do believe Mr. Price is acting in his mind still pursuant to the order of this Court and that is why we feel this Court would have the authority to discontinue.*

(RA-37) (Emphasis added).

Petitioners made all of their arguments to the family court regarding the alleged misconduct of Price and others. (R-131, 133, 123, 125, 74-78, 82, 132, 135-137, 116-21). The Court denied the parents' repeated motions to have the therapists removed from the cases and independent therapists appointed. (R-131, 75, 119).

The conduct of a health care professional must be evaluated in accordance with health care rather than legal standards. The court specifically directed Price to "[lay] aside any legal considerations" and give his opinions. (RA-42). Price's recommendations to the court regarding the Myers children were in complete accord with established therapeutic thought. (R-459-469).

Price's brief and isolated contact with Missy Buchan and Jeff Brown was undertaken to assist Price in his evaluation of the Myers children. Petitioners have not stated one fact to support their allegation that Price's single contacts with Missy and Jeff were coercive. Even if such facts could be alleged, they are irrelevant because the contacts occurred pursuant to the court's order. Price has never talked to any of the Lallak children.



Petitioners claim that Price misrepresented himself to be a psychologist to Scott County Juvenile Court. The transcripts of the Juvenile Court unequivocally refute any suggestion that Price misrepresented his credentials to the court. It is undisputed that Mr. Price was not even present in the Juvenile Court on the day he was appointed by the Court. On the first occasion he appeared in Scott County Juvenile Court, on April 19, 1984, Mr. Price testified in response to the fourth question asked of him by the Court as follows:

Q: Did you do any testing?

A: No, I didn't I am not a psychologist so I don't do testing.

(RA-40).

Price repeatedly advised the court that he was not a psychologist. (RA-49).

The facts supported by the record indicate that Price was acting within the scope of his appointment. The Eighth Circuit held that Respondent Price, along with the other therapist and guardians ad litem, were entitled to absolute immunity for any damage claims based on their testimony before the family court, their function of providing reports and recommendations to the family court, and their function of questioning children:<sup>9</sup>

The absolute immunity which is accorded persons acting as an integral part of the judicial process protects them from having to litigate the manner in

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<sup>9</sup>The Eighth Circuit was uncertain whether the immunity protecting Price and others for questioning children extends to reporting the results of those inquiries to law enforcement personnel. However, the Court reasoned that even if such reporting was beyond the scope of Price's duties, it was undertaken on his own initiative as a private person. Therefore, the conduct would not constitute action under color of state law which would invoke liability under §1983.

which they performed their delegated functions. We conclude that encompassed within the delegated functions was the authority and perhaps the duty to ascertain what had happened from the children's point of view. Questioning the children was necessary to perform the functions of determining the children's needs, protecting their interests and making recommendations to the family court. Therefore, in the alternative to their qualified immunity for this conduct, the appointed guardians, therapists and attorney have absolute immunity for claims arising from the function of questioning children.

810 F.2d at 1467. (F-61).

The Eighth Circuit's decision is consistent with other federal courts of appeals decisions and the decisions of this Court. Petitioners have not raised a reviewable issue regarding the application of absolute immunity to Respondent Thomas Price.

### III.

#### **Petitioners Have Not Presented An Issue Of Qualified Immunity That Warrants This Court's Review.**

As a preliminary matter, the qualified immunity inquiry is inappropriate as to Respondent Price, given the Eighth Circuit's adjudication of his absolute immunity from suit on undisputed facts.<sup>10</sup> The qualified immunity issue is included to in Petitioners' second question presented for review.

Petitioners here have referred to the "familial liberty interest" that Respondents have allegedly violated.<sup>11</sup> Peti-

<sup>10</sup>The qualified immunity issue, although not properly presented or argued as to Respondent Price, is discussed in the interests of caution.

<sup>11</sup>Petitioners also identify conduct on Price's part, alleging that he aided and abetted the prosecutor's attempts to continue the separation of the children from their parents. Again, these allegations constitute only a vague reference to conspiracy.

tioners have set forth no argument supporting the position that Respondents violated the liberty interest without due process of law. Petitioners argue that their mere identification of the constitutionally protected right is enough to defeat qualified immunity under *Harlow v. Fitzgerald*, 475 U.S. 800 (1982).

This Court's recent decision in *Anderson v. Creighton*, 55 U.S.L.W. 5092 (1987) Clarifies the *Mitchell* and *Harlow* decisions holding that the "clearly established right" that is allegedly violated must be stated in a particularized manner. Mere allegations of conduct in violation of, for example, the due process clause or the right to be free from warrantless searches is not sufficient to defeat qualified immunity. The Court stated that:

... if the test of "clearly established law" were to be applied at this level of generality, it would bear no relationship to the "objective legal reasonableness" that is the touchstone of *Harlow*. Plaintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.

55 U.S.L.W. at 5093.

The plaintiffs must allege particularized conduct that results in a violation of a right, not just that actions merely affected a constitutionally protected right.<sup>12</sup> Petitioners here have failed to establish that the Eighth Circuit's decision was inconsistent with this Court's decisions in *Mitchell*, *Harlow* and *Anderson*. Therefore, the qualified immunity question is not appropriate for this Court's review.

<sup>12</sup>The Eighth Circuit specifically stated that mere allegations of conspiracy were insufficient to pierce the Respondents' immunities. 810 F.2d at 1453-54.

**CONCLUSION**

The Eighth Circuit properly reviewed a complete record in deciding this case. Petitioners have never had, and never will have sufficient facts to establish a colorable claim of conspiracy. Nor do they have facts to establish conduct that falls outside the absolute immunity granted the Respondent Price.

The Petitioners have failed to fulfill the requirements of Rule 17. The issues raised by Petitioners do not warrant this Court's review.

For the reasons set forth above, Respondent Thomas Price respectfully requests that the Petition for a Writ of Certiorari be denied.

Dated: August 5, 1987

**MEAGHER, GEER, MARKHAM, ANDERSON,  
ADAMSON, FLASKAMP & BRENNAN**

**/s/ DOUGLAS J. MUIRHEAD**

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## **APPENDIX**



RA-1

**APPENDIX**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION  
IN RE SCOTT COUNTY**

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Master Docket No. 3-85-774  
[Filed on behalf of Plaintiffs  
Myers (Civ. No. 4-84-1066)  
and Buchan (Civ. No. 3-84-1615)]

**MEMORANDUM OF THOMAS PRICE AND PHIPPS-  
YONAS & PRICE AND ASSOCIATES IN OPPOSI-  
TION TO MOTION BY PLAINTIFFS LALLAKS TO  
RECONSIDER DETERMINATION OF ABSOLUTE  
IMMUNITY.**

**I.**

**ALL CONDUCT OF THOMAS PRICE WAS TAKEN  
PURSUANT TO ORDER OF SCOTT COUNTY  
FAMILY COURT.**

Plaintiffs argue that Thomas Price should be deprived of absolute immunity because he acted outside of the directive of the Scott County Family Court. The Court ordered that Thomas Price evaluate the Myers children to determine their counseling needs and other issues that need to be addressed. Thomas Price acted at all times in the good faith belief that he was acting in accordance with the Court's order. On October 12, 1984 at a hearing before the Honorable Michael A. Young, Thomas Price testified as follows:



"Q. (Mr. Kurzman continuing): Mr. Price, has someone other than this Court, to your knowledge, requested that you continue what you described as the therapist's relationship with the Myers children?

A. I have never received any direction from the Court after I submitted an interim report. My feeling is that the evaluation is really on-going because Andy is continuing to talk about further incidents of sexual abuse with other people.

Q. That is what I thought —

A. So I have never received any direction to cease and desist doing the evaluation of Andy.

Q. So am I correct in my assumption that your activities including those of September 25 and the other activities that you have been involved in have been in your mind under the auspices of the direction by this court in February of 1984 to determine their counseling needs or issues of needs to be addressed as scheduled by Scott County Human Services?

A. Certainly issues that need to be addressed. yes.

Q. Would it be fair to say that you are not operating as a result of any directives or requests of anyone else in Scott County?

A. No."

In addition, the Court has been provided with transcripts of hearing on April 19, 1984 and July 11, 1984, in which Thomas Price testified at length regarding the nature of the evaluation he was performing. At no time in either of those hearings did he receive any indication from the Scott County Family Court that his actions were outside the scope of its direction.

II.

PLAINTIFFS HAS OFFERED NO EVIDENCE TO SUGGEST THAT THOMAS PRICE INITIATED FABRICATED STORIES FROM ANY CHILD.

Plaintiffs suggest that Mr. Price's contact with Melissa Buchan and Jeff Brown should deprive him of his absolute immunity. Price testified that he had a single contact with Melissa Buchan and a single contact with Jeff Brown. Both contacts were made for the purpose of assisting him in his evaluation of Andy Myers. Tom Price testified that he needed to determine whether the allegations being made by Andy were in fact true to determine his therapy needs. Due to the ongoing nature of the allegations made by Andy and the amount of information, the evaluation by necessity continued over a period of time. Plaintiffs' own expert, Dr. Jonathan Jensen testified that in a criminal sexual abuse matter, a mental health professional would need to uncover facts in order to determine whether sexual abuse has occurred. (Exhibit A). The transcript of Mr. Price's testimony is not yet available, a citation will be provided to the Court at the earliest possible time should this be required.

Mr. Price's single contact with Melissa Buchan occurred in the presence of BCA Agent Pat Shannon. Mr. Shannon is not a Defendant in this case. Mr. Shannon has been deposed, and has testified that he never heard Thomas Price act in any fashion to obtain false testimony from any child. (See excerpt from Pat Shannon's testimony attached hereto as Exhibit B).

Mr. Price was present at a single interview on July 16.

1984 with Jeff Brown. Jeff's therapist, Robert Van Siclen, testified that Tom Price called him and asked him to let him know if Jeff talked at all about the Myers family. (Exhibit C). Contrary to Plaintiffs' counsel's allegation, the murder allegations were not first developed during the July 16 interview. As Plaintiffs' counsel is well aware, Scott County Deputy Sheriff Earl Fleck has notes dated July 11, 1984 which reflect that Jeff Brown began talking about murder allegations five days prior to the interview for which Price was present. (Exhibit D). The suggestion that Tom Price somehow implanted the homicide allegations in Jeff Brown is absolutely unsupported by evidence. The deposition testimony of Van Siclen indicates that Price did not question Jeff Brown in a way that was leading or suggestive. The portion of the transcript referred to by Plaintiffs, refers to questioning done by the sheriff's deputies. Van Siclen testified that the only portion of the interview that made him uncomfortable was the portion in which Jeff was being shown photographs by the sheriff's deputies. (53-54, 157-158). Van Siclen further testified that he never saw Tom Price putting words into the child's mouth. *Id.* at 159. Nor did he ever observe Tom Price interact with a child in a way in which Van Siclen believed was improper. *Id.* at 159. In fact, Van Siclen testified that at the July 16 meeting, he could only recall one thing that Tom Price said. When it appeared that Jeff was contradicting himself, Van Siclen testified that Price told Jeff (quoting from Abraham Lincoln) that "no man is a very good liar because no man has a good enough memory." *Id.* at 158.

Plaintiffs further imply that Tom Price should have somehow communicated the substance of Jeff Brown's

## RA-5

interview to the Court. Tom Price was never asked to testify to the Court regarding Jeff Brown. If Price had so testified, Plaintiffs would undoubtedly allege such testimony as a pertinent fact that Price acted outside the scope of his appointment by the Court.

Finally, Plaintiffs rely on the alleged failure of Thomas Price to provide the Court with the results of the independent psychologist's evaluation of the Myers children. Family Court Judge Young ordered that Guardian ad Litem Paul Thomsen was responsible for disseminating the psychological reports. Tom Price gave four copies of the psychological evaluation done by Judge Bevens to Paul Thomsen. Paul Thomsen was cross-examined in Myers juvenile hearings before Judge Schmitt regarding this issue. Thomsen testified that it was his responsibility to disseminate the psychological evaluations provided to him by Tom Price. Despite defense counsel's efforts to obtain complete copies of the juvenile transcripts, such transcripts are not available to defense counsel. However, counsel for Plaintiffs Buchan and Myers has possession of the entire transcript of the juvenile proceedings in Myers.

In their attempt to overturn this Court's decision, Plaintiffs' counsel misrepresent Price's contacts with Andy and Amy Myers in which indications of sexual abuse occurred. Price testified in his deposition that his first contact with Andy Myers was on March 12, 1984. Price saw Andy again on March 29, 1984 in which Andy was anxious but provided no information regarding the basis for his anxiety. The next interview with Price was on April 2, 1984. Notes from that meeting show that Andy began talking about visions he was having in which children were hurt. On

## RA-6

April 10, 1984, Andy stated that he wanted to talk about the sexual abuse. On April 19, 1984, Andy related specific incidents of sexual abuse. (See Exhibit E). Contrary to the Plaintiffs' assertion, Andy Myers was seen by Tom Price four times, including the initial intake interview before Andy started to give some indication that there may have been abuse in his home. With respect to Amy Myers, Amy indicated on the initial intake interview that the reason she was in foster care was because both her mom and her dad did bad things to her. When Tom Price testified at the April 19, 1984 hearing before Judge Eugene Atkins, Price disclosed to the Court how many times he had seen both Andy and Amy Myers. Price testified and disclosed to the Court that neither Andy nor Amy had made specific allegations of sexual abuse.

## CONCLUSION

Contrary to the Plaintiffs' assertion, the evidence discovered since the initial summary judgment motion provides no basis for this Court to reconsider its decision to dismiss all allegations against Thomas Price by reason of absolute immunity.

**RA-7**

Dated: October 24, 1985

Respectfully submitted,

**MEAGHER, GEER, MARKHAM, ANDERSON,  
ADAMSON, FLASKAMP & BRENNAN**

**/s/ DIANNA R. STALLONE**

James M. Roegge, #92678

Douglas J. Muirhead, #75978

Dianna R. Stallone, #165074

2250 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402

(612) 338-0661

Attorneys for Thomas Price

\* \* \*

[19]

Q. Were you requested to become involved in the investigation as to whether or not the children had been sexually abused at that stage?

MR. KURZMAN: I object to the use of the term "investigation." I think the doctor has indicated what the scope of the issues was.

MR. MARTIN: You may answer.

A. I did not understand my charge to be investigating per se the sexual abuse question. If I may expand a little bit on that, because the way I would define investigation would be to, under the facts, to answer the question as speedily as possible.

Q. (By Mr. Martin) Just a small detour. Does the role of a psychologist or psychiatrist in a criminal sexual abuse matter, in your judgment, ever involve the psychia-



**RA-8**

trist or the psychologist unearthing facts in order to determine whether sexual abuse has occurred?

A. Yes.

Q. Under what circumstances would that be the proper role of the psychiatrist or psychologist?

MR. HUNZIKER: I would like to interrupt, Mr. Martin. I guess I think you could be a little more definitive in your questioning in regard to this area. As you talking about his

\* \* \*

**EXHIBIT A**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

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**IN RE: SCOTT COUNTY MASTER DOCKET  
COURT FILE NO. 3-85-774**

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**DEPOSITION OF PATRICK SHANNON**

Date: July 9, 1985

Commencing at: 1:30 p.m.

Reported by: Theodora E. Coenen

**SPOTTS & COENEN**

**COURT REPORTING SERVICE**

7515 Sheridan Avenue South

Minneapolis, Minnesota 55423

866-6905

378-9047

**EXHIBIT B**

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[177] BY MS. STALLONE:

Q. You previously testified today that you were present when Tom Price interacted with the children, is that correct?

A. In some of the occasions, yes. Right, I was.

Q. You have also testified that Tom Price asked direct and factual questions. Is that a fair statement of your earlier testimony?

A. Yes.

Q. Do you make any claim that you have ever witnessed Tom Price putting words in a child's mouth?

MR. MANNING: This, wait. This witness doesn't have any claims. The use of that word, I don't know. I don't like the use of that word.

BY MS. STALLONE:

Q. Do you make that assertion?

MR. MANNING: He doesn't make assertions. He is here to speak the truth. He doesn't make claims against anybody.

BY MS. STALLONE:

Q. Did you ever observe Tom Price putting words in a child's mouth or coercing a child to make statements that were untrue?

MR. KURZMAN: Objection. Multiple.

[178] BY MS. STALLONE:

Q. You can answer.

A. Putting words into a child's mouth?

Q. Yes?

A. No.

Q. As to the second part of the question, did you ever



**RA-10**

observe Tom Price coercing, in your mind, a child to make statements that were factually untrue?

A. Did he force these children into making statements that were untrue, no, he did not.

Q. It is true, is it not, that you have witnessed Tom Price tell the children that one of the rules of interviewing is that kids are absolutely to tell the truth.

A. I don't know if he used the word "absolutely", but I heard him on more than one occasion tell them to tell the truth.

Q. Okay. Have you ever been present when Susan DeVries interacted with children?

A. On one occasion.

Q. When was that?

A. That was I wanted to talk to Missy Buchan and Susan — it had to be done at Susan's office and her guardian, Johnson had to be there too.

Q. Did you — What was the purpose of that that you were

\* \* \*

Q. Was this at the direction of Ray Perron that she asked questions?

A. To assist Ray, yeah.

Q. Did you observe, in her interaction, did you observe Susan Phipps-Yonas put words into a child's mouth?

A. No, I did not.

Q. Did you observe Susan Phipps-Yonas coerce a child into making statements, incriminating statements?

A. No.

Q. Did you ever see any of the three people that I just talked about, Susan Phipps-Yonas, Tom Price or Susan DeVries offer anything that you would consider to be a bribe to a child in exchange for information?

**RA-11**

A. A bribe, did I ever see one of these therapists?

Q. Yes. What you would —

A. No. I understand the question. No.

Q. I just have a couple more questions:

I have a question about one of your reports, specifically this report is dated September 25, 1984.

MR. MANNING: What file did it come out of?

MS. STALLONE: I am sorry, it comes out of the Morgenson file. I am sorry, it is Exhibit 4.

\* \* \*

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STATE OF MINNESOTA) ss.  
COUNTY OF HENNEPIN)

I, Theodora E. Coenen, a Notary Public in and for the County of Hennepin, State of Minnesota, do hereby certify:

That prior to being examined, the aforementioned witness was sworn to testify the truth, the whole truth and nothing but the truth;

That said transcript of proceedings, consisting of 195 pages of typewritten material, was taken down by me in Stenotypy at the time and place herein named, and was thereafter reduced to typewritten form under my direction;

I further certify I am neither related to any of the parties or Counsel, nor interested in the matter directly or indirectly.

WITNESS MY HAND AND SEAL this 14th day of July 1985.

Theodora E. Coenen,  
Court Reporter.  
My Commission Expires: 10-13-90

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\* \* \*

[53]

questions, that the deputies asked leading questions or that they put words in Jeff's mouth?

A. I'm reviewing some of what I recall.

Q. That's fine.

A. The only thing that I can recall that I was uncomfortable with was that a few of the people that were in the photographs that were shown to Jeff, Jeff would be handed a photograph and said "Was this person among," and he would frequently say yes, and something about "Were you afraid of this person? Was this a scary guy for you," and I recall feeling at that point that Jeff was going along with some of — you know, giving what he thought the investigator wanted.

Q. You've responded to give me what you think you observed Jeff doing. My question was did you observe the deputies putting words in Jeff's mouth?

A. Only to the extent that they seemed to focus on certain individuals who I don't know, but that they seemed to focus on certain individuals rather than allowing more open-ended responses.

Q. Were those individuals that had been identified by Jeff as being people that he knew?

A. Yes.

Q. And once he identified them, then the deputies asked some more questions about those individuals?

## EXHIBIT C

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RA-13

\* \* \*

[54] A. Yes, but there were others that Jeff had not spontaneously identified about which the deputies asked questions.

Q. On the back side of feedback report that's dated July 16th and July 18th, 1984, there is a note circled and underlined dated 7/18. Is that a reflection of the events at a meeting on the 18th of July?

A. That's correct.

Q. And that's separate from the notes on the previous page for July 16th.

A. That's correct.

Q. This note says, and read with me, "Mix up above stories, then got quiet, asked to talk just with me and denied whole thing, including initial sexual abuse, which is well documented. Clearly very scared." Now a couple of questions. First of all, when you say "above stories", what are you referring to?

A. The stabbings and murders that he had discussed previously.

Q. On the July 16th?

A. That's correct.

Q. And then on the last line when you say "very scared", you've underlined "very" three times, is that correct?

A. Yes.

Q. Is that based on your observations of him in the —

\* \* \*

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[157] Scott County Attorney's office were there and Jeff Brown was there and two people who I later found out to be sheriff's deputies were there, and that was we adjourned

to an adjoining room off of Kathleen Morris's office and talked to Jeff.

Q. Okay, so that was on 7/16. Now was that the meeting where Jeff was shown some photographs?

A. I believe so. Now the two dates, 7/16 and 7/18 confuse me. There is something of a blur during those two days.

Q. Okay, was Tom Price at both of those meetings?

A. I believe he was, but I can't be absolutely sure that he was there on the 18th.

Q. You have no specific recollection of Tom Price being present on the 18th, July 18th meeting?

MR. HUNZIKER: I believe that's a misstatement on his testimony. He said he believed he was there.

THE WITNESS: No, I don't.

BY MS. STALLONE:

Q. I asked do you have a specific recollection of Tom Price being at that July 18th meeting.

A. No, I do not.

Q. With respect to the July 16th meeting, you testified that some photographs were shown to Jeff. Who showed [158] those photographs to Jeff?

A. The sheriff's deputy, who I believe was Norm Pint.

Q. Can you specifically tell me what did Tom Price do during that meeting?

MR. HUNZIKER: 7/16 meeting?

MS. STALLONE: Yes. That would be the only one, since he doesn't recall him being at the other one.

MR. HUNZIKER: That's not what his prior testimony is. You didn't happen to be here the other time when he said he was present at the July 18th meeting.

BY MS. STALLONE:

Q. You can just —

**RA-15**

A. Whenever Tom Price was there, he asked some follow-up questions.

Q. Do you remember what those questions were?

A. No. I remember only one thing that Tom Price said.

Q. And what was that?

A. When it became apparent that Jeff was contradicting himself, Tom said, quote, said that he was quoting from, I believe it was Lincoln in saying that "No man is a very good liar because no man has a good enough memory," and that, I mean, that quote stuff, and I don't recall any other specifics of what Tom Price said [159] or asked.

Q. Okay, just to clarify here — strike that. Now during any time that you saw Tom Price interact with children, did you ever observe Tom Price putting words into a child's mouth?

MR. HUNZIKER: Object to the question as vague and indefinite.

MR. NOTERMANN: Also leading.

BY MS. STALLONE:

Q. You can answer.

MR. HUNZIKER: Foundation.

THE WITNESS: No.

MS. TSCHIDA: Excuse me, your answer is no?

THE WITNESS: No.

BY MS. STALLONE:

Q. Did you ever observe Tom Price interact with a child in a way in which you believed was improper?

A. No.

MR. HUNZIKER: I'd like to note an objection here. Are we talking about kids involved in the Jordon sex cases, other children? I mean, do you want to limit this in some fashion so we know what children we're talking about?

BY MS. STALLONE:

Q. Do you know what children I'm talking about?

\* \* \*

[168]

\* \* \*

Q. Now because I got a little confused before, I want to make sure that we've covered all of the interactions that you've had with Tom Price that concern these cases. Have we discussed either in your previous deposition or in this deposition all of your interactions with Tom Price regarding sexual abuse of children that you can recall?

A. There was one additional phone call that I can recall.

Q. Okay, can you tell me when that was?

A. On or about 4/12/1984, Tom called and asked if Jeff ever mentioned his client.

Q. Okay, is that the conversation you referred to in your previous deposition, reading from page 25, line 6, "No, I was asked by, called by Tom Price who was seeing Andy Myers, I believe, and asked to let him know if Jeff talked at all about the Myers family." Is that the conversation you are talking about?

A. That's correct.

MS. STALLONE: I have no further questions.

(Brief recess taken.)

### EXAMINATION

BY MR. STURGES:

Q. Mr. Van Siclen, my name is David Sturges, and I'm one of the attorneys for the Scott County Department of Human Services. I just have a couple of questions to

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RA-17

DATE: 10-12-84

*INTERVIEW:* Tuesday 07-10-84 — 1400 hours continued

\*\*\* talked about another party during that interview in which he stated Rawson arrived at the party at Benz's again, along with George Gould and they had with them a dark black male, curly hair, maybe \*\*\* years old or so. Rawson again was physically and sexually abusive with this black male and cut the black male with his knife and then Rawson and Gould left the party with that same kid.

So, during this interview on July 10, 1984 with \*\*\*, he stated that on at least two parties during the summer of 1983 at the Benz residence in Jordan, he had observed Bob Rawson arrive at the party with black male children, one approximately the age of \*\*\* and one approximately age \*\*\*, and that at those parties, the younger black male was in-fact, sexually abuse, cut with a knife, shot with a handgun, and disposed of in some fashion.

The other black male was beat up and cut with a knife and left with Rawson and George. Gould, and \*\*\* was not sure what happened to that black male after he left the party at that time.

*INTERVIEW:* Wednesday 07-11-84 0915 hours — Scott County Attorneys Office

SUBJECT: \*\*\*

The fifth interview in this series of interviews was with a boy by the name of \*\*\* \*\*\* who I believe is \*\*\* old, and the \*\*\*. Present with me during this interview was Norm Pint from the Scott County Sheriff's Office, and \*\*\* guardian. The interview took place at the Scott County Attorney's Office at 0915 hours, July 11, 1984, which was a Wednesday.

At this time I was looking for evidence which might



RA-18

corroborate the statement from \*\*\* with regard to these parties that \*\*\* had talked about at the Benz residence where possibly some black or mulatto kids had been severely injured or even killed.

At this time \*\*\* talked about having gatherings with a number of different people in which sexual abuse occurred, as well as, beatings, and as well as photography taken. All he indicated at this time in this interview was that someone might have been hurt real bad. But basically \*\*\* was telling us that he wasn't ready to talk about that at this time.

#### EXHIBIT D

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*INTERVIEW:* Wednesday 07-11-84 approximately 1200 hours. Scott County Attorney's Office.

*SUBJECT:* \*\*\*

The sixth interview was on that same day, Wednesday, July 11, 1984 at approximately noon. I met with a \*\*\* year old \*\*\* by the name of \*\*\*, along with \*\*\* was her guardian \*\*\* and Norm Pint, of the Scott County Sheriff's Department. This interview took place at the Scott County Attorney's Office.

Because \*\*\* had been identified by \*\*\* as someone who was present at one of the sex abuse parties where kids had been perhaps severely injured or even killed, my purpose in this interview was again to verify \*\*\* statement. \*\*\* recalled being at a party at Benz's, recalled that sexual abuse had occurred at that party back in the summer of 1983, and that adults were taking pictures of the sexual activity at that party. \*\*\* had no clear recollection of any black or mulatto children being killed at a party at Benz's.

**RA-19**

I think it is important to note at this time that as these interviews developed, it came out that perhaps the alledged homicides took place not at the Benz residence exclusively, but also at the Tom and Helen Brown residence in Jordan, which is just down the road from the Benz residence. Therefore, as we interviewed some of these children initially and talked about what they had seen at the Benz residence when they said they hadn't seen much at the Benz residence with regard to homicide, that didn't necessarily mean that they hadn't seen a homicide that had occurred at the Brown residence, but that we just hadn't asked them about the Brown residence.

**INTERVIEW:** Wednesday 07-11-84 1320 hours, Scott County Attorney's Office

**SUBJECT:** \*\*\*

Interview number seven took place at 1320 hours on Wednesday 07-11-84, at that time I talked with \*\*\*, and present in the interview was Norm Pint, and I believe his guardian \*\*\*. This was the second interview with \*\*\* on this date. I believe we had gone back to him to clarify a few points because earlier \*\*\* had talked about a party at the Al Thesen residence in Jordan, and he had talked about a black kid being at that residence who had been really drunk and who had gotten in an argument, I believe with Al Thesen, and that Al Thesen had taken the kid beaten him up and possibly killed him. So this was \*\*\* mention of a black boy. \*\*\* also stated that George Gould had brought some blonde haired kid to one of the parties and forced that kid to have sex with other kids at the party.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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IN RE: SCOTT COUNTY MASTER DOCKET  
COURT FILE NO. 3-85-774

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DEPOSITION OF EARL A. FLECK

October 11, 1985

David Soulis, CPR

Ray J. Lerschen & Associates

1026 Soo Line Building

Minneapolis, MN 55402

(612) 341-2122

---

[52]

\* \* \*

A. Yeah. I don't know. That — I just don't know. I'm sorry, I'm just really fuzzy.

Q. How many interviews did you participate in of Jeff Brown?

A. Well, I would say the 23d would be one, the 16th would be one and the 11th would be number three, apparently. Apparently three interviews —

No, did we interview him twice in one day? Apparently four times.

Q. All right, so it would be twice on July 11, is that what you're saying?

A. Apparently. It says 09:15 hundred hours and then the next page 13:20 hundred hours.

# BEST AVAILABLE COPY

RA-21

Q. Let's start with that first interview with Jeff Brown at 9:15 in the morning on July 11. Why don't you just scan that, if you would, please?

A. Okay.

Q. Do you recall if you were the person who was taking notes, or excuse me, strike that.

Was anyone apart from yourself taking notes at that interview of Jeff Brown?

A. I don't recall.

Q. Do your notes reflect who was present apart from yourself and Jeff Brown?

A. Yes.

[53]

Q. Who was that?

A. Diane Johnson, Norm Pint.

Q. At any time during the course of that interview did Jeff Brown make a statement that he had witnessed any murders or any mutilation of any children?

A. Apparently not.

Q. And then sometime later in the day Jeff Brown was interviewed again, is that correct?

A. Yes.

Q. That's at the Scott County Attorney's office, is that correct?

A. In that adjacent office, yes.

Q. All right, so evidently young Jeff Brown had been there from sometime around 9 o'clock in the morning until at least 1:00 something in the afternoon, is that correct?

A. Right, 1:20.

MS. STALLONE: I'm going the object here, I don't know that this witness has any knowledge that he was there for that whole period.

MR. HUNZIKER: That's just what he indicated.

MS. STALLONE: I don't think there's any foundation for him to.

MR. HUNZIKER: Your objection is noted.

BY MR. HUNZIKER:

Q. How long did that second interview last, would you say, Mr. Fleck?

[54]

A. I don't know, I didn't put any times in.

Q. Okay, do you have any recollection now as to how long you would spend with a child when you interviewed him?

A. The time varied from maybe 15 to 20 minutes to, I think, two or three hours.

Q. In the second session with young Jeff did he make any allegations of murder or mutilation?

A. Apparently he talked about Al Thiessen killing a kid.

Q. During that interview did Jeff Brown indicate there were other children present when Mr. Thiessen allegedly murdered a child?

A. My report indicates that he made reference to George Gould bringing — well, I don't know if it's that particular incident. I don't recall, but I think he said there were other kids around.

Q. Okay, you didn't make note of any children?

A. No.

Q. So you don't have the names of any children listed here?

A. Not in my report.

Q. Do you have any independent recollection of the names of any children?

A. No.

RA-23

Q. Do you have any records apart from this 16-page report

\* \* \*

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[75]

STATE OF MINNESOTA)  
COUNTY OF HENNEPIN) ss.

BE IT KNOWN that I, David Soulis, took the deposition of EARL A. FLECK;

That I exercised the power of that office in taking said deposition;

That by virtue thereof I was then and there authorized to administer an oath;

That said witness was duly sworn to testify to the whole truth relative to this action before testifying;

That said deposition is a true record of the testimony given by the witness;

That the witness reserved the right to read and sign the deposition;

That I am neither attorney or counsel for, nor related to or employed by any of the parties to this action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the outcome of this action.

WITNESS MY HAND AND STAMP this . . . . day of  
....., 1985.

David A. Soulis

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PATIENT: MYERS, ANDY, AMY AND BRIAN  
3/12/84 INTAKE INTERVIEW

The Myers children were referred by Jan Daniels of Scott County Child Protection Services. The Myers' children's father is Greg Myers, a police officer with the Jordan Police Department, who was recently arrested on allegations that he had been sexual with a number of minor children in the Jordan area. Initially, I interviewed Jan Daniels to find out what the current situation was. She stated that Mr. Myers had been arrested and subsequently bailed out of jail, was currently living with his wife, Jane Myers. She also stated that the three children were in foster care. Andy Myers has been placed in an emergency foster home and will shortly be moved to a more permanent setting. Brian and Amy Myers were placed in the same foster home and will remain in that foster home until this case can be resolved. Jan Daniels stated that only Amy Myers was making any allegations in regard to her father. I did not ask the specific content of those allegations, wanting to interview the child to gain my own information. I initially interviewed Andy Myers. Andy is a tall, handsome, 11-year-old boy who approached the interview with some apparent anxiety. He appeared very nervous, although he talked freely. He did not laugh or was not animated during the session at all. He stated that he was told that he was coming to a counselor but did not specifically know why. He stated that he was living in a temporary foster home and was having some difficulty in that foster home. Andy stated that he did not know his biological father. He stated that he had lived for approximately six years with his mother with the grandparents doing a considerable amount of babysitting. He



stated that approximately five to six years ago his mother married Greg Myers, who subsequently adopted Andy. For the most part he stated that he likes his father, that he does a number of things with him. He talked specifically about playing basketball and his father putting up a basketball hoop, but that something happened to the backboard and he was unable to complete that prior to his arrest. He appeared relatively tearful during certain parts of the interview. One was when I asked if he missed his mother. He became somewhat tearful, although he never did completely cry during any part of the session. He also stated that he missed both Brian and Amy. He stated for a long time that he felt like he was taking care of his mother. He was concerned that she might have a nervous breakdown with him gone at this point. His attachment was clearly in favor of the mother. However, he stated very clearly that he does not believe any of the allegations against his father. He stated that he's changed his last name to Cheevers from Myers to avoid publicity in school. He has changed from the Jordan Elementary School to, I believe, the Shakopee Elementary School where he is in sixth grade. He states that he does relatively well in school, that he likes a lot of athletics, specifically wrestling, basketball and football. That seemed to be a high point for Andy. He smiled somewhat at that point. We did not get into any specifics of what might have happened to Andy or what he might have seen in the home. I kept the interview session fairly light for the most part. One of the most prominent features of Andy's emotional posture was his nervousness. He bit his fingernails a great deal during this session and also rung his hands throughout most of the interview. He stated that his world has been basically turned

up-side-down. He asked a number of questions: 1) when was this whole thing going to be over. I stated that I did not know, but that it was somewhat dependent on what other people did. One of the things that I mentioned was that if in fact somebody had been sexual with kids, it would go quicker if that person would talk about it. If not, then the thing would have to go to trial and it takes much longer. He also asked if I thought his father would ever be able to get a decent job. He also asked when he would be able to see Amy and Brian on a more consistent basis. He also wanted visitation with his mother. I stated that maybe some time in the near future he could have visitation with his mother but that it would probably be supervised visitation. At that point he became somewhat frustrated and said that that's what he thought it would probably have to be supervised visitation. I suggested that at sometime in the near future he might be able to have supervised visitation with his mother with me in my office and he became somewhat more excited at that prospect. At that point I terminated the interview with Andy Myers and brought in Amy Myers. Amy was much more verbal about why she was there. She stated that she was there to talk about some bad things that had happened to her. I asked her where she was currently living and she said with Linda who was apparently the foster mother. I asked Amy why she was living with Linda and she stated that she was living with Linda because she was safe when she lived with Linda. I asked her why she needed to be safe and she said because some bad things happened to her. I then asked who might have done those bad things to her and she stated that, my dad. "Craig" and not "Greg" had done those bad things. It was my assumption that she was merely mispronouncing

Greg and pronouncing it as Craig. I cleared that up with her and it was clearly a reference to her father, Greg Myers that she was making. She stated that both mother and father had done bad things to her. At this point, Amy turned on the couch and faced me and spread her legs extremely wide and thrust her pelvis towards me. At the same time clasping her vaginal area with her hands. This was not necessarily a reference to showing me what had happened but while she was talking about bad things it seemed like she almost unconsciously did it. At that point she realized where her hands were and what position she was in and became somewhat uncomfortable and took her hands away. Amy did not talk at all about any specifics of what the bad things meant and I did not press her in this session to define what bad things were. She did talk about a number of friends that she was involved with, although not referencing being sexually involved with them. The names that she brought up were, Missy Courtney, Billy, Becky and Wade. I asked the county worker to check out to find out if any of those names were other possible victims and it was determined that those were merely friends of Amy and not necessarily sexually involved. Amy tended to be very verbal during the session. She was very animated during the remainder of the session. I then terminated the interview with Amy and brought Brian Myers in. Brian is a 19-month-old child who does not have good verbal skills. He came into my office very willingly, but then did not want to stay beyond about two or three minutes. I then brought Andy Myers back into the session just to make Brian feel somewhat more comfortable. He immediately wanted to leave. I then discussed with Andy Myers what information he felt like I could tell the county worker who

accompanied him on this date. He stated that there was no information that he gave me that he did not want me to share with the county worker. I then proceeded to share with the county worker basically what Andy and Amy Myers had told me. We then scheduled the next appointment and scheduled testing with Judy Bevan. I also did the case consults to Judy Bevan which have become part of the case record.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 3/29/84

Andy was seen today for one hour at this clinic. His appearance was good. His mood was very distant and his affect was flat.

Andy appeared upset today. Still very anxious, but not giving any information on basis for anxiety. Building relationship at this point. Need to discuss psychological evaluation and recommendation.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/2/84

Andy was seen today for one hour of individual therapy at this clinic. His appearance was good. His mood was very anxious. He is talking about getting visions but unclear as to content. Says the visions come and go and he and kids get hurt — won't talk anymore and I've decided not to push him at this point. Psychological evaluation done on March 20, 1984 by Judy Zenk, Licensed Psychologist. Results in one or two weeks. I'm pushing her for write up to help evaluation.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/3/84

Andy was seen for 50 minutes of individual therapy today in this clinic. His appearance was good. He appeared more anxious — not as strong in denial — making references to not wanting to return home and continue to not want Amy and Brian to return. Andy continues to talk of visions. A vision may be a memory. Continuing to probe feelings but the facts seem to get in the way. Needs to talk about what happened.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/5/84

Andy Myers was here for evaluation for 50 minutes. He did not want to talk about anything significant today and made it quite clear. We struck a bargain to work on the evaluation for a time and relax for a time. Andy likes to play checkers. He wants to see Amy and Brian and will next session.

Consultation with Judy Zenk. Andy pretty fragile and emotionally traumatized; maybe removal or sexual abuse-obsessive/compulsive, regimented — as coping skills. Report soon.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/10/84

Andy was seen here today for 50 minutes of individual therapy. His appearance was good. His mood was light, superficial; affect was flat.

Andy today talked about wanting to begin talking about the sexual abuse so he could get this all over with. He also talked about the possibility of not wanting to return home.

He was concerned about what might happen to Amy and Brian, although he wasn't specific about what he thought might happen. He is resigned about his own fate and feels that he could go home and be okay, but he does not want Amy and Brian to return home. Other than that, Andy's talk was light and superficial today. He did seem somewhat relieved when I said that today we wouldn't talk about what had happened to him, but would just begin building a relationship and talk about other things. Andy will be seen again next Thursday morning.

— Thomas L. Price, M.S.W.

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PATIENT: ANDY MYERS 4/12/84

Andy was seen here for 50 minutes of individual therapy today. His appearance was good; his mood was distant and his affect was flat.

Andy came in and announced that he did not want to talk. He only wanted to play games. I allowed him to do that, as I've been putting pressure on him recently. During the course of playing battleship, Paul Thomsen, his guardian ad litem, came and delivered a bunch of letters and packages to Andy. We then decided to terminate the game and start going through the various packages. He got to one letter from his mother and father, presumably written by his mother; one of the comments she made in the letter was that she had hoped that was going to be over fairly soon and that they would be home. Andy read that and got tears in his eyes. At that point, he announced that it probably was not going to be over for quite some time and they were probably not going to be home, he said, "cause of what happened." He chose not to go any further, and I didn't pursue it. Another comment that Andy made was



that he feels like he wants to talk about it, but can't. One of the reasons he wants to talk about it is to get this over with. His actual comment was, "I probably should talk and get it wover with," but he stopped talking at that point. We then proceeded to go through the rest of the letters and the rest of the session was uneventful. Andy will be seen two times next week.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/17/84

Andy was seen for 50 minutes of individual therapy today to deal with allegations that he had been sexually abused. His appearance was good; his mood was: extreme anxiety, pale, trembling. Affect was agitated.

Andy was comfortable upon entering the session. I had backed off on questioning him for the last two or three sessions. Today I decided to move in on him again and do more questioning of what might have happened. Andy became relatively anxious then. He said that whenever he begins to think about it, he draws a blank. He said that at times, he has a vision of what might have happened, but the flees very quickly. He then indicated that he is concerned about returning home and about Amy and Brian returning home. When I said there is a possibility that Amy and Brian and he could return home, he looked frightened. His complexion went pale and he said, "With dad at home?" I stated that I didn't know, that was up to the court on whether Dad could still be there. He became even more agitation and said that at times he wants to go home because he misses his mother, but that basically he did not want to go home. I then asked Andy if he felt like talking



any more about what happened, and he said no. We then played checkers and then terminated the session.

— Thomas L. Price, M.S.W.

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Patient: ANDY MYERS 4/19/84

Andy was seen for 50 minutes of individual therapy to deal with allegations that he had been sexually abused by his mother. Prior to the session, I talked with Mr. Norm Pint of Scott County Sheriff's Office and I also talked to Pat Brown of the office. Both indicated that they had talked with Andy just previous to my session and that he had not indicated any substantiated sexual abuse within the family. I then met with Andy. He approached the playroom, as he normally does, with calm and ease. Today I told him that again I was going to begin asking questions about the possibility of being sexually abused. I indicated to Andy that I had received information that his mother had also been involved in the sexual acts, both with him and with Brian. Andy then indicated to me that he got visions of her being sexual with him, but he did not recall it. I said I thought his visions might serve in the stead of his memory. He agreed that he was using the word "vision" for memory. He then began to talk about an incident that occurred at Tom and Helen Brown's house. He indicated that they were in the kitchen and that there were a number of other women around the table. He indicated that at that time he had sucked on the breast of his mother. He also indicated that Brian was in the room, although he did not substantiate any sexual activity between the mother and Brian. I asked Andy if it was true what he was saying, that he had in fact sucked on his mother's breast, and he said yes. I then asked him whether that was a vision or a memory, and he said that he remembered doing it. He was

unclear about the time, although he stated that it probably did occur the summer before this summer. He also stated that Jeff and Brandy were present. I asked him where his father was, and he was unclear as to that. I asked him where Amy was and he was unclear as to that, also. At that point, I felt that Andy had had enough questioning and need to relax. He seemed on the verge of tears. I asked him if he had been protecting his mother up to this point and he said yes. He stated that he was concerned that his mother might get in trouble. I then ceased questioning him on that issue. I then called Paul Thomsen and indicated to him that Andy had begun talking about having been sexually abused by his mother. In the conversation with Paul, I then indicated to Kathleen Morris what Andy had begun to substantiate. I then talked with Miriam Wolf, and indicated also to her that Andy had begun to substantiate some of the abuse. I then brought the foster mother in and asked Andy if it was okay that I share some of the information with her. At that point, he seemed reluctant for me to share. I asked him if he had indicated to other people that I had told him not to talk with other people. He said no, that was not his understanding, that I had given him permission to talk to everybody else, but that at this point he only wanted to talk with me about it. I repeated that he had permission to talk with anybody but me about it at this point. I then again asked him if I could share with the foster mother and he indicated yes. I asked if he wanted to be in the room or not and he indicated that he did not want to be in the room. Andy then left the room and I shared the information with her that Andy was beginning to substantiate the fact that he had sucked on his mother's breast on at least one occasion. The session then terminated.

— Thomas L. Price, M.S.W.

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Patient: AMY AND ANDY MYERS 4/19/84

I appeared in court today, having been requested to be there by Paul Thomsen, the guardian ad litem for Andy, Amy, and Brian, and on behalf of Miriam Wolfe, the assistant county attorney. Apparently, there was a motion brought by Dennis Moriarty, who is the defense attorney for the mother and grandmother, to seek the return of the kids to the custody of Mother and if the court would not grant

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Phone (612) 338-0661

October 24, 1985

Hon. Harry MacLaughlin  
512 U.S. Courthouse  
110 S. Fourth Street  
Minneapolis, MN 55401

Re: Scott County Master Docket  
Court File No. 3-85-774  
Our File No. 44174

Dear Judge MacLaughlin:

Rather than impose upon the Court additional memoranda by this letter, I am briefly responding to the issues raised in Marc Kurzman's reply memoranda in the above-entitled matter.

Mr. Kurzman argues that the last question and answer quoted in our memoranda indicates that Tom Price was acting at the direction of Scott County officials and not pursuant to the Court order. Taken in context, it is clear that both the witness *and* Mr. Kurzman understood Tom Price to be saying that he was not acting pursuant to direction of Scott County officials, but was acting pursuant to the Court's order. Immediately after the quoted exchange Mr. Kurzman stated to the Court: "Your Honor, that's why I have asked these questions. I do believe Mr. Price is acting in his mind still pursuant to the order of this Court and that is why we feel this Court would have the authority to discontinue."

I have enclosed copies of the completed exchange for the Court's review.

Very truly yours,  
/s/DIANNA R. STALLONE  
Dianna R. Stallone

DRS/jmb

Enclosures

cc: All Counsel of Record

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VOLUME II

STATE OF MINNESOTA  
County of Scott

IN COUNTY COURT  
First Judicial District

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FILE NO. 84-01784

HEARING

In the Matter of the Welfare of: Andy, Amy and Brian  
Myers, Minor children.

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The above entitled matter came on for hearing before the Hon. Michael A. Young, one of the judges of the above named court, without a jury, in the Courthouse in the City of Shakopee, County of Scott and State of Minnesota, on the 10th and 12th days of October, 1984.

APPEARANCES

MS. MIRIAM J. WOLF, Assistant Scott County Attorney, Scott County Court House, Shakopee, Minnesota 55379, appeared for the Petitioner.

MR. PAUL H. THOMSEN, Attorney at Law, 16670 Franklin Trail S.E., Prior Lake, MN 55372, appeared as guardian ad litem.

MR. DENNIS P. MORIARTY, Attorney at Law, 206 Scott Street, Shakopee, MN 55379, appeared for Respondent Jane Myers.

MR. MARC G. KURZMAN, Attorney at Law, and  
MS. CAROL GRANT, Attorney at Law, 601 Butler Square, 100 North Sixth Street, Minneapolis, MN 55403-1579, appeared for Respondent Greg Myers.

\* \* \*

[205] Q. (Mr. Kurzman continuing) Mr. Price, has someone other than this court, to your knowledge, requested that you continue what you described as the therapist relationship with the Myers children?

A. I have never received any direction from the court after I submitted an interim report. My feeling is that the evaluation is really on-going because Andy is continuing to talk about further incidents of sexual abuse with other people.

Q. That is what I thought —

A. So I have never received any direction to cease and desist doing the evaluation of Andy.

Q. So am I correct in my assumption that your activities including those of September 25th and the other activities that you have been involved in have been in your mind under the auspices of the direction by this court in February of 1984 to determine their counseling needs or issues of needs to be addressed as scheduled by Scott County Human Services?

A. Certainly issues that need to be addressed, yes.

Q. Would it be fair to say that you are not operating as a result of any directives or requests of anyone else in Scott County?

A. No.

MR. KURZMAN: Your Honor, that's why I have asked [206] these questions. I do believe Mr. Price is acting in his mind still pursuant to the order of this court and that is why we feel this court would have the authority to discontinue.

THE COURT: I have heard all I need to on that subject.

MR. KURZMAN: Okay. May I ask one more question? I will ask and see if the court will allow it.

Q. (Mr. Kurzman continuing) Mr. Price, in your mind how does the presence of police officers help determine the children's counseling needs or issues that need to be addressed as scheduled by Scott County Human Services?

A. Because Andy is able to talk to other people about what's happened to him and Andy's perception that these people will protect him and help him so that it won't occur again. I think that is a counseling need issue.

Q. Okay. You apprised in July that you felt it would be inappropriate for Andy to have any visitation with his parents insofar as they sexually abused him. Do you recall making such recommendation?

A. Yes, I do.

Q. Is that still your opinion today?

A. Yes, it is.

Q. Is it not true — that Andy's emotional well being would be furthered if he could interact with his parents,

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STATE OF MINNESOTA  
County of Scott

COUNTY COURT  
Family Division

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In re: The Matter of the welfare of Andy, Amy and Brian  
Myers, minor children.

FILE NO. 84-01784  
TRANSCRIPT OF PROCEEDINGS

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The above-entitled matter came on for hearing before  
the Honorable Eugene Atkins, one of the Judges of the



above-named Court, on the 19th day of April, 1984, at the Scott County Courthouse, Shakopee, Minnesota.

APPEARANCES:

MIRIAM J. WOLF, Assistant Scott County Attorney, Scott County Courthouse, Shakopee, Minnesota, appeared on behalf of the State.

PAUL H. THOMSEN, Attorney at Law, Prior Lake, Minnesota, appeared as guardian ad litem for the minor children.

DENNIS P. MORIARTY, Attorney at Law, 206 Scott Street, Shakopee, Minnesota, appeared on behalf of Jane Myers.

[5]

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THOMAS L. PRICE,

was called as a witness and being first duly sworn, was examined and testified as follows:

THE COURT: Mr. Price, we have discussed this in chambers and I have indicated a couple things to the attorneys; one, that I have known you for some considerable period of time and that we have had a friendship many years and I have also indicated, and I hope that all people know that this is true, that whatever it was, I would do exactly what was right no matter who was involved. I suggested to them that I would crystallize some of the concerns I might have and I suspect would surface in this thing one way or the other so that we can deal with them one at a time. I will ask you a couple of questions. I would like to have you respond to them. After we discussed this matter then I am going to open it up to cross-examination

by the various attorneys to which I have indicated that I am a great believer in this system and to the extent that they have some hard questions on it you better be prepared to answer them.

THE WITNESS: I shall.

THE COURT: With that you're aware, are you not, of the circumstances that bring this matter [6] to the Court?

THE WITNESS: Yes, I am.

THE COURT: You have talked to the youngsters?

THE WITNESS: Yea, I have. Numerous times.

BY THE COURT:

Q. On how many occasions, approximately, have you talked to them?

A. I have seen Amy Myers on six different occasions and Andy Myers on eight occasions starting on, I believe March 12th and ending on April 17th.

Q. And the third child because of the age you didn't see or what?

A. Brian I see every time Amy comes in because he accompanies Amy. But because of his age I really don't see him in a session.

Q. What were the durations of the visits, generally half hour or hour?

A. Generally an hour. Between fifty to sixty minutes.

Q. Did you do any testing?

A. No, I didn't. I am not a psychologist so I didn't do testing.

Q. Has any testing been done?

A. Yes.

[7] Q. Who did that?

A. Judy Bevens who is a psychometrist in our clinic.

Q. What tests were administered, do you know?

A. The WISC-R, Wexler revised, Bene Anthony, California Family Relations Test, sentence completion, Kinetic Family Drawing, Rorschach, Thematic apperception test, child version and house-tree-person draw test.

Q. Were these tests evaluated by a professional?

A. Yes, by Judy Bevens.

Q. Was anything rendered in writing?

A. Yes.

Q. What was the results?

A. It's hard for me to really do that because, again, I am not the tester and I'm — I don't have the tests with me. I can summarize.

Q. That's what I want.

A. Basically, Andy Meyers was seen as a very fragile kid and a very traumatized kid, somewhat obsessive, compulsive, normally bright, average intelligence. I think that's pretty much what I would summarize on Andy. Amy was somewhat less fragile than Andy, extremely bright IQ, I believe about a hundred thirty-four which is in the superior range of intelligence, well socialized kid and no particular trauma points with Amy. And Brian, because of his age was not tested.

[8] Q. With reference to Andy, you talked about traumatized — fragile and traumatized. From the evaluation of the test and from your own evaluation and analysis, what is traumatizing the boy?

A. I can't say, Your Honor, nor could the tester say. Obviously the two points that she was weighing in terms of the etiology of trauma would be whether the removal from his home and family was the trauma or whether — going on the basis that there are allegations that he was sexually abused, whether that sexual abuse was the trauma.

She could not pinpoint the cause or etiology or origin of the trauma.

Q. Okay. Now, in this matter you're well aware of what a neglect petition is?

A. Yes, that's correct, Your Honor.

Q. You're aware of the allegations in this matter?

A. Yes, I am.

Q. I don't want to deal with the substance of the allegations. A motion has been brought on by the mother in which she requests one of several different things and I want to talk through them with you. One is, of course she would like the return of the three children to her pending this hearing on the merits; and secondly and alternatively — in that first instance the father would be out of the home. I suppose we could make that [9] into sub-issues, whether or not all three, some, one or none should or could be placed with the mother during the interim.

The next question was, the grandparents would take them into their home. I think for the purpose of discussion we may assume that the grandparents are fine, upstanding, religious and decent people who are very concerned about their grandchildren. I think we can make that assumption.

Now, let's start with the first part. As a professional, what would your thoughts be about the impact or effect on the children, laying aside any legal considerations as to what course of action the Court should follow with reference to these three children and their placement? If you want you can address the whole question.

A. Surely, Okay. I can address it in two different ways. Number one, my opinion on what would happen to all three kids if they were returned home. The second thing I did, and one of the things that I have talked with Andy

about, is that I would be very honest with him during this whole process, that nothing would happen or nothing that I knew about would I keep from him. So in that regard I told him that there was going to be a hearing on the Thursday and I told him that to the best of my [10] understanding that that hearing was to talk about whether he and Amy and Brian should return home. I said that basically just the way I related to the Court and I said it just that casually. Andy turned ghost white and started to tremble. That was just this last Tuesday now. He visibly lost all color in his face. He had come into my office and into the playroom and was just chatting and had normal color and was sitting on a beanbag chair and relaxed at that point. When I said that, he became flushed, he became extremely pale and visibly started to shake, turned to me and said, "Not with my dad home". His second comment was "Amy and Brian can't go home". As soon as I tried to try and question him about why he didn't think that they should go home he stopped talking and wouldn't say any more. He basically stayed shaken for the rest of the probably forty to forty-five minutes I had left with him. He also made the statement that he did not want to return home. Again would not state why he didn't want to return home, would not say what he thought was going to happen. The only thing he did state was that he gets visions of what happened to him and then they go right away. I tried to, again, probe on what the content of the visions, or what the abstract of the visions were. He wouldn't say. He said "It's all just sort of [11] swirling together", and then he basically stopped talking for the rest of the session. Experience tells me if these kids were sexually abused, and I have to report to the Court that I don't have any factual

basis to say that they were abused, they are not currently talking about any specific abuse. Amy will say that she has "dark bad secrets" that she can't talk about. She will say the "dark bad secrets" involved both mom and dad. When you ask her what the secret is she won't say. She just keeps repeating that she has "dark bad secrets". Both times when I have probed with her and pushed her hard to find out what the secrets are, the one time she was sitting in my office and she was sitting on a couch and I was in my office, I was sitting on the far end of the couch approximately three or four feet away from her, she turned and faced me, talked about the secrets, and almost as if she didn't know what she was doing, grabbed at her vaginal area and starting rubbing her vaginal area while talking about the bad secrets. She then almost realized what she was doing and sort of looked at her crotch and pulled her hand away and stopped talking.

On Tuesday when I talked with her and she again brought up the dark bad secrets involving both mother and father, she initially grabbed a little [12] doctor's kit that we have, a Fisher-Price doctor's kit, and one of the things it has in it is a thermometer which is larger than a normal oral or rectal thermometer. While she was talking with me about the dark bad secrets she kept trying to — trying to put it in her vagina would be I think a misspeak in that she was obviously fully clothed, but it was obvious she was rubbing the thermometer on her vaginal area. The only time she does that is when you talk about these dark bad secrets with her.

So I believe that something has happened to these kids. I believe that the secrets are very possibly sexual. I think returning these kids home. I don't think you would ever



find out what those secrets are. I think that the kids would feel unsafe to ever talk about those. So my opinion would be — and both of them are extremely comfortable in the foster homes and very trusting of their foster parents, very comfortable with them and very safe, or feeling very safe. My opinion at this point would be that they ought not be returned home.

Q. Either to the mother or the grandparents?

A. I don't know the grandparents, Your Honor. I don't know how supportive they are of the kids telling what happened. I believe certainly, Your Honor, as you [13] believe, that the grandparents are good, fine, upstanding people. But at the same time, from hundreds and hundreds of cases like this, I know that people want to maintain their family, they want to support family members and at times, and quite often they will want to support that family member by getting the child to recant what they have said. It's sort of like, that's okay, you know, I know, it happened to you but we won't talk about it anymore and I promise it won't happen anymore and we will protect you. And that doesn't happen. I understand that impetus of the family to want to hold together and support together. But in this case I don't think it would be for the benefit of the kids. So experience and not any factual basis of who grandma and grandpa are tells me it wouldn't be a good idea.

Q. Let's approach several other things by way of this.

I think we can assume that this case may conceivably go on for a very long period of time. I am talking about that there will be other factors that complicate it such that it's the kind of file that may be open for a long time. Obviously it seems to me it's not good for children to be growing up as wards of the state. they are better placed



with their blood relatives if possible. How can that be accomplished, and also with reference to the two-year old, while —

[14] A. I would like to make some comments on the two-year old also, Your Honor.

Q. Does not the two-year old stand on a different basis than the other two?

A. I thought so also, and one of the things that I did was I requested of the County Attorney's office and the guardian to have a visit with the mother so that these kids could see mom because I too am aware of that bond between the mother and these children. When mother came into the office and Brian and Amy were brought in, we brought them in separately, Amy and Brian and then Andy, my opinion would be that Brian was visibly frightened of his mother. He would not go near her. He ran from her and he ran to the foster mother and called her mom and wanted to get up on her lap.

Q. Isn't there something natural in that too?

A. Well, there is. One can conjecture that Brian is very angry at his mother for having been removed and was going to punish her. The other one would be that he is possibly afraid. I can't render an opinion at this point on who — or which one is true. I can say that I believe that in my opinion Brian appeared to be afraid of his mother. She tried to pick him up and he wanted down immediately and started to cry and she let him down and he ran to his foster mother and crawled up on her [15] lap. Again, I don't want to make more of that than it is, but it concerns me.

Q. Well, that concern aside, does not Brian stand on a different basis, and if not with his mother, the grandparents?

A. Not particularly, no. Again, when I speak of sexual abuse, if I don't preface it with alleged, I mean alleged. But if in fact Brian has been sexually abused then I believe that he stands in no different stead than the other children. He is younger, he needs nurturance.

Q. But in terms of him, you have a kid who is just learning his own name as a two-year old. What is there that the grandparents could do that would in any way screw up the process?

A. The grandparents, Your Honor, could indicate very clearly to Brian to not ever talk or act out what happened to him, and it would be very possible to manipulate a two-year old to not do that. One of the therapy techniques ultimately with Brian will be to give him anatomically correct dolls and act it out. If every time you said, don't do that, ultimately you're going to close that down.

Q. But he may be able to speak for himself at age eighteen, however long this case goes on. That's my concern. You talk about the fragility of Andy?

[16] A. Yes.

Q. When we're talking about fragile, in what sense are we talking about fragile?

A. We're talking about emotionally fragile. We're talking about the possibility of the thing we call decompensation or breaking down into what people normally would describe as a nervous breakdown, becoming basically emotionally dysfunctional. And the fragileness means that could happen very easily for Andy.

Q. Don't we run the risk that the system itself might be doing these things?

A. Absolutely.

Q. What are we going to do about it?

A. Your Honor, quite frankly, I have laid awake nights thinking about that. I don't know. One of the things that I have said is, I don't want to become the abuser in this case. I don't want to push these kids so hard in terms of what's happened to them that I in effect become abusive. I guess I will leave it to the wisdom of the Court what we're going to do. I don't know for sure. I believe that something has happened to these kids. I believe that they have a lot of earmarks of having been sexually abused. I believe that for their ultimate emotional well-being we have to find out what [17] that was and we have to provide treatment, but that's going to take time. I wish I could tell the Court and the kids how long that was going to take. I can't.

Q. Well, let's approach it again. With reference to Andy and with reference to Brian, what risk does the Court run other than the possible spoilation of evidence in placing them with the grandparents? Am I tampering with his emotional state such that it would be on my conscience if something were to go wrong? I think in all things things can go wrong and I accept that, on the other hand, I don't want to be foolish and arbitrary and push the boy into a situation where I am placing him at risk because of my foolish judgment. I won't do that.

A. I believe, Your Honor, that placing the kids back with family or extended family members at this point would put them in a situation or in an environment within which they would not feel safe. Based on the fact that I believe that something has happened to those kids I believe that if we would place them back in an environment within which they would not feel safe, that the ultimately would never be able to talk about what happened to them and that that would cause further emotional damage to these kids.

THE COURT: Mr. Moriarty, it's your ox that's being gored. Why don't you start with the [13] questioning.

CROSS-EXAMINATION

BY MR. MORIARTY:

Q. Mr. Price, the Court's familiar with you and the County Attorney's familiar with you but I'm not. What are you other than — you're a psychologist?

A. No. I am a therapist. I'm a psychotherapist. I have a master's degree in social work.

Q. You indicated that Andy was fragile and traumatized and that the tests, apparently a substantial number of tests, were administered to him; is that correct?

A. That's correct.

Q. You're aware of the fact that Andy grew up with his grandparents?

A. Yes. I don't know how long.

Q. Did you talk to him about that?

A. Very briefly.

Q. Do you have an idea how long he lived there?

A. No, I don't. It seems to me what I recall is something like six years.

Q. But he is eleven, so probably the most formative years were spent with his grandparents, Lois and Dave Wolfram; is that right?

A. If we accept that.

\* \* \*

[20] has some strong fear, at least in your opinion, of his father?

A. In my opinion, yes.

Q. Do you think his reaction could have been substantially different if he knew that his mother placed a

condition on his returning that the father not be in the house?

A. The second question that I asked him when he said, not with my father, then we explored not with father. That's when he said Amy and Brian can't return home. And he stayed visibly shaken even though we were talking about with dad not there.

Q. Return home in terms of your saying — that you clarified the fact that the father would not be there and still Amy and Brian could not return home?

A. Yes.

Q. And he didn't say why?

A. No, he did not say why.

Q. Well, you have indicated — in your preliminary conversations you have indicated that the tester couldn't say whether or not this trauma was caused by his removal or by the criminal sexual allegations?

A. That's correct, yes.

Q. So could this trauma in fact be caused by his removal from the home?

A. It could be, yes.

\* \* \*

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[67]

STATE OF MINNESOTA)  
COUNTY OF DAKOTA)

REPORTER'S CERTIFICATE

I, Marlyn E. Engh, one of the official court reporters for the First Judicial District of the State of Minnesota, do hereby certify that the above and foregoing transcript,

RA-51

consisting of the preceding sixty-six (66) pages is a correct transcript of my original stenograph shorthand notes, and is a full, true and complete transcript of the proceedings.

Dated September 12, 1985.

/s/MARLYN C. ENGH

Marlyn C. Engh  
Court Reporter

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STATE OF MINNESOTA  
County of Scott

IN COUNTY COURT  
First Judicial District

---

In the Matter of the Welfare of: Andy, Amy and Brian  
Myers, Minor children.

FILE NO. 84-01784  
TESTIMONY OF THOMAS PRICE &  
DORIS WILKER

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The above entitled matter came on for hearing before the Hon. Michael A. Young, one of the judges of the above named court, without a jury, in the Courthouse in the City of Shakopee, County of Scott and State of Minnesota, on the 11th day of July in the year 1984.

#### APPEARANCES

MS. MIRIAM J. WOLF, Assistant Scott County Attorney, Scott County Court House, Shakopee, Minnesota 55379, appeared for the Petitioner.

MR. PAUL H. THOMSEN, Attorney at Law, 16670 Franklin Trail S.E., Prior Lake, MN 55372, appeared as guardian ad litem.

MR. DENNIS P. MORIARTY, Attorney at Law, 206 Scott Street, Shakopee, MN 55379, appeared for Respondent Jane Myers.

MR. MARC G. KURZMAN, Attorney at Law, and  
MS. CAROL GRANT, Attorney at Law, 601 Butler Square, 100 North Sixth Street, Minneapolis, MN 55403-1579, appeared for Respondent Greg Myers.

\* \* \*

[9] A. Those concerns would be the same as I have for Andy that she would be subjected to undue pressure to recant statements that Amy has also made about chronic long term sexual abuse involving a number of adults and a number of other children.

MS. WOLF: I have no further questions.

THE COURT: Mr. Moriarty.

MR. MORIARTY: Thank you, Your Honor.

### CROSS EXAMINATION

BY MR. MORIARTY:

Q. Mr. Price, would you please indicate for me what your academic background is?

A. Yes. I have a bachelor's degree from the University of Minnesota in social work. I also have a master's degree in social work from the University of Minnesota.

Q. Have you taken any subsequent courses or obtained any further degrees, specialist degrees, anything like that?

A. I have taken a number of additional courses primarily through the University of Minnesota program in human sexuality. I have obtained no further degrees at this point.

Q. You have a master's degree in social work?

A. Yes, that is correct.



Q. What area of expertise do you have with regard to children, if anything?

\* \* \*

[13] me, parents refer to me, I get self-referrals, police departments refer to me, any number of sources.

Q. Apparently you became involved in this case when this Court, Judge Young, issued an Order I think back in January, is that correct?

A. I believe it was February, but sometime around that period of time.

Q. Did you ever see that Court Order?

A. Not to my knowledge, no.

Q. Who contacted you with regard to your directive under that?

MS. WOLF: Objection, beyond the scope of cross examination.

THE COURT: We are considering here the limited issue of the grandparents' visitation.

MR. MORIARTY: This is preliminary where he got his mandate. He rendered a professional opinion with regard to the children. I think it's mandatory to find out where he is coming from, who he is working for and where his allegiances lie.

THE COURT: Overruled.

A. (The witness continuing) I was contacted by the guardian ad litem, Mr. Thomsen.

Q. (Mr. Moriarty continuing) What did Mr. Thomsen tell you with regard to what you were supposed to do?

[14] A. I believe that he informed me that they wanted an evaluation, that there were allegations that these children had been sexually abused and he wanted me to provide a psychological evaluation of the children and also to do an

evaluation as to whether there was any validity to the allegations.

Q. Did he do this in writing or verbally?

A. Verbally, I believe. Verbally, yes.

Q. Did he make any memorandums or directives?

A. My directive was quite clear to me.

Q. You understood that you were to conduct an evaluation?

A. That is correct.

Q. Did you do that?

A. I am in the process of doing that.

Q. How long do you think that is going to take?

MS. WOLF: Objection, Your Honor, that is irrelevant to these proceedings.

THE COURT: Sustained.

Q. (Mr. Moriarty continuing) Well, you received your original mandate sometime in February of 1984. This hearing is July the 10th or 11th of July and you are still in the process of conducting your evaluation?

A. That is correct.

Q. How many times have you seen Andy Myers?

A. I see Andy generally two times a week and I started in, [15] I believe, mid or late March seeing him so probably can add that up.

Q. How many times have you seen Amy Myers?

A. I see Amy Myers on a weekly basis and seen her continuously other than my vacation time.

Q. How many times have you seen Brian Myers?

A. Very briefly. I see him when Amy comes in generally. I do not interview him. He is not verbal.

Q. In any event these are established interview periods that you have seen them since receiving your original mandate from the Court?

A. That is correct.

Q. Have you ever submitted a written report to the Court regarding your findings or current status of your evaluation?

A. I submitted a psychological which, however, of course, was not done by me. I am not a psychologist. I did submit a copy of the psychological to the guardian.

Q. Did you ever submit a report to the Court at all?

A. I submitted a letter. I believe that letter went out Tuesday of this week.

Q. That is the first communication that you have made with the Court since you have received your mandate in February of 1984?

A. That is correct.

[16] Q. Other than the psychological —

A. Wait a minute. I also believe I submitted a letter to Judge Atkins regarding visitation with the mother.

Q. That was following a hearing and request, is that right?

A. That's right.

Q. Other than the psychological that you made reference to did you ever submit any other written reports to Mr. Thomsen?

A. No, I haven't.

MS. WOLF: Objection, irrelevant to these proceedings.

THE COURT: Overruled.

Q. (Mr. Moriarty continuing) Do you communicate with Mr. Thomsen regularly?

MS. WOLF: Objection —

THE COURT: What is the purpose of this?

MR. MORIARTY: He has rendered an expert opinion. I think we have an absolute right to know where he is com-

ing from and who he receives the mandates from. It is my position that Mr. Price has received a mandate of this Court back in February that said he was to evaluate the matter, interview the children to determine their counseling needs. That is exactly what the Court said. I would like to know what he did in regard to that mandate to give him the authority and the expertise [17] that he is testifying with here today.

THE COURT: His number of contacts with Mr. Thomsen, however, has nothing to do with that issue.

MR. MORIARTY: I think we have a better understanding who he is communicating with.

THE COURT: What I want is the understanding what is in the best interests of the children with these grandparents and that is all. That is the only issue being litigated this morning.

MR. MORIARTY: I am not sure, is the objection overruled?

THE COURT: No, objection is sustained.

Q. (Mr. Moriarty continuing) Mr. Price, I'd be interested in knowing, do you feel that under any circumstances children that have not been sexually abused, that there is no allegations of sexual abuse, do you think it's important that they maintain a positive relationship with parents and grandparents?

A. Surely.

Q. Do you think it's important that children have roots and identities that relate back and have an ongoing communication with their grandparents?

A. Yes, I do.

Q. Is that high on your list of priorities?

A. Certainly is.

\* \* \*

[23] THE COURT: Overruled.

A. (The witness continuing) I communicated that primarily to Doris Wilker saying I had some concerns about visitation, that Andy was saying to me in sessions things regarding pressure. She indicated to me she was also hearing that from Andy.

Q. When did you do that?

A. Sometime in June.

Q. Did she call you and ask that?

A. Repeatedly I called her and told her I was concerned about that.

Q. Did you initiate that conversation then?

A. Yes.

Q. Okay. Why did you chose to go to Doris Wilker?

A. Because I knew she was supervising the visitation and quite frankly I had hoped, as opposed to ceasing the visits, maybe she could say something to the grandparents or watch Andy more closely or stay by him more closely, then we would not have to curtail the visitation.

Q. Okay. So you communicated this to her with that objective in mind?

A. Yes.

Q. You did not communicate that to the guardian?

A. Not to my recollection I did not.

Q. And am I correct to say that your mandate by this Court [24] is still going on, that, to-wit: determine the counseling needs of the children?

A. That is correct, yes.

Q. And I presume that you charge at an hourly rate for your work?

MS. WOLF: Objection, irrelevant.

THE COURT: Overruled.

Q. (Mr. Moriarty continuing) What is your hourly rate?

A. Seventy-five dollars.

Q. That is paid thus far by the County?

A. I don't know what's been paid on it or not. I presume it's paid on combination of County funds and medical assistance by the State.

Q. Apparently when you contacted Doris Wilker there was at least some indication in your mind if it were curtailed then it would be back to normal, there would be no problem? That's what you testified to, I believe.

A. I don't understand your question.

Q. I believe your response was earlier you contacted Doris Wilker because she is involved in the supervision of visitation and your objective was to advise her of that so she could tell the Wolframs not to do it and thereby relieve the problem?

A. That is correct.

Q. And I presume that your recommendation in that regard

\* \* \*

[40] Q. Would you agree further that the first time questions were addressed to the Myers children as to whether there was any sexual contact between any members of their family and themselves they said "No"?

A. That is correct, yes.

Q. Would you further agree then that they answered in conflict with the first answer "No", is a recantation?

A. Yes, they are certainly recanting their first answer.

Q. I believe that you said that one of the statements related to you which Andy Myers said to him by his grandfather was, if he kept saying what Tim Price wanted him to say innocent people may go to jail? Is that correct?

A. That is correct, yes.

Q. And you interpreted that as an effort by the grandfather to have the child recant his statement?

A. Yes, I would.

Q. Would you agree that if there was no sexual assault and the child said there was that innocent people might go to jail?

A. Excuse me. Repeat that.

Q. Would you agree that if there was no sexual assault of the child, but the child said there was, that innocent people might go to jail?

A. Yes.

Q. Would you interpret a statement directed at a twelve year

\* \* \*

[47] A. (The witness continuing) Any adults at all that they had contact with prior?

Q. (Mr. Kurzman continuing) Yes.

A. No. I would not agree to that.

Q. Do you think that if they had a minister of the family church with whom they had established some communications and trust relationship it would be beneficial to the interests of the children to continue communicating with the minister of the church?

A. Yes, and in fact I encouraged that and facilitated that.

Q. Would the same recommendation apply to the Sunday school teacher that the children had?

THE COURT: You are getting a little far afield, Mr. Kurzman.

MR. KURZMAN: Is that the Court's objection to me?

THE COURT: It is my statement that you will not be allowed to inquire further in this direction.

MR. KURZMAN: Can I ask the witness to respond to this question?



THE COURT: No, you cannot.

Q. (Mr. Kurzman continuing) If visitation with the grandparents is discontinued what would you recommend with regard to the best interests of the children in order to continue a family support system for them?

\* \* \*

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[94]

STATE OF MINNESOTA) ss.  
COUNTY OF SCOTT)

REPORTER'S CERTIFICATE

I, James E. Benson, District Court Reporter, First Judicial District, State of Minnesota, do hereby certify that I reported the foregoing proceedings in stenotypy and thereafter transcribed the same as evidenced by the foregoing transcript and that the same is true and correct of my original shorthand notes of said matter before the Hon. Michael A. Young, one of the judges of the above entitled court.

/s/ JAMES E. BENSON  
James E. Benson  
District Court Reporter  
Scott County Court House  
Shakopee, Minnesota 55379

DISTRIBUTION:

Original to Court  
Copy to Kurzman  
Copy to Moriarty  
Copy to Wolf  
Copy to Thomsen

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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IN RE: SCOTT COUNTY MASTER DOCKET  
COURT FILE NO. 3-85-774

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DEPOSITION OF RAYMOND PERRON  
REPORTED BY JANICE L. YOUNG, RPR  
SPOTTS & COENEN  
COURT REPORTING SERVICE

7515 Sheridan Avenue South  
Minneapolis, Minnesota 55423

866-6905

378-9047

\* \* \*

[128] they explain to you their theory, for starters, that Tom Price, quote, "put these things in Andy's mind," end quote?

A. That is a note here, yes.

Q. Did you ultimately decide that that was true?

A. No.

Q. Did you reject that theory?

MR. MANNING: Well, that's not a theory. That's a statement about Tom Price.

MR. MARTIN: It's a theory, counsel; it says so on the note.

MR. MANNING: All right, then it's also specific as to a person and a theory has a tendency to being broad-ranging, but this statement in the note says it's a theory that Tom Price, right. So it's specific as to Price.

MR. MARTIN: Can he answer the question?

MR. MANNING: Sure. Just trying to clarify it.

THE WITNESS: Your question is do I agree with Mr. Kurzman's analysis that Tom Price put these thoughts in Andy Myers' mind?

BY MR. MARTIN:

Q. Okay, that's the question.

A. I don't agree with that.

\* \* \*

[131] A. In all probability, yes.

(Brief off record discussion.)

BY MR. MARTIN:

Q. Off the record Mr. Kurzman has advised that Sharon Satterfield did do a tape, an interview with Missy Buchan, and just so I'm clear, is it true that you never heard that tape?

A. See, this particular area — I did not hear the tape.

Q. And that's because you were principally concerned with the Myers?

A. Yes.

Q. Turning to page two of your notes of the interview with the attorneys, you've written, quote, "Feels that Andy was brainwashed by Price," end quote. Did you at any time form your own opinion on that score as to whether that was true or false?

A. Yes.

Q. What was the opinion you formed?

A. Based on my investigation, I did not concur with Mr. Kurzman on this point. I felt that Mr. Price had attempted to be a professional.

Q. What was the basis for the opinion you formed?

A. The interviews that I had done in the presence of Mr. Price of Amy and with Andy and in talking with them going out to the Quarry Campground. I felt that he was [132] basically a sincere individual. I don't think that he attempted deliberately to brainwash Andy Myers.

Q. Could you tell us more specifically what you observed about the way he handled himself and the way he interacted with the children that led you to the opinion that he was being sincere and that he wasn't trying to brainwash Andy? What specific things did you observe about his demeanor and his conduct?

A. He was a very caring —

MR. MADIGAN: Just for the record, I'd like to object on the basis of foundation and too, just establishing what meetings there may have been where he observed that so I can better understand his testimony.

BY MR. MARTIN:

Q. Go ahead.

A. To best say it, I think I observed sort of a father-son relationship between Price and Andy Myers, one of nurturing, one of caring, one of touching, real empathy.

Q. Did you observe Mr. Price, did you hear Mr. Price, I should say, putting words into Andy's mouth?

A. I don't recall.

Q. Did you hear Mr. Price telling Andy facts that other children may have talked about?

MR. MADIGAN: Objection, foundation.

[133] THE WITNESS: Not while I was present.

BY MR. MARTIN:

Q. Did Tom Price tell you that he believed Andy Myers on the issue of criminal sexual abuse?

MR. NOTERMANN: When?

THE WITNESS: Yes.

BY MR. MARTIN:

Q. Did you agree with — strike that. The next line says, "Andy-trouble in foster home." Is that something that you learned from either Mr. Kurzman or Ms. Grant during the interview?

A. Yes.

Q. Did you do your own investigation to determine if that was true or not?

A. I spoke to his foster mother, yes.

Q. What did you learn — strike that. Who was the foster mother, was it Craigthorpe?

A. No, Candy —

MR. KURZMAN: Candy.

THE WITNESS: What's the last name?

BY MR. MARTIN:

Q. Craigthorpe?

A. Candy Craigthorpe, okay.

Q. Did you make a report of your interview with her?

A. I don't recall.

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[290]

STATE OF MINNESOTA)  
COUNTY OF WASHINGTON) ss.

CERTIFICATE

BE IT KNOWN that I, Janice L. Young, took the foregoing deposition of Raymond Perron;

That I was then and there a Notary Public in and for the County of Washington and State of Minnesota;

That by virtue thereof I was then and there authorized to administer an oath;

That the witness, before testifying, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in stenotypy by me and was reduced to typewriting under my direction;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were reserved; and

That I am not related to any of the parties hereto, nor an employee of any of them, nor interested in the outcome of the action.

WITNESS MY HAND AND SEAL this 29th day of September, 1985.

(SEAL)

Janice L. Young  
Registered Professional Reporter

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